

108TH CONGRESS  
1ST SESSION

# S. 1248

To reauthorize the Individuals with Disabilities Education Act, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 12, 2003

Mr. GREGG (for himself and Mr. KENNEDY) introduced the following bill;  
which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To reauthorize the Individuals with Disabilities Education Act, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Individuals with Dis-  
5       abilities Education Improvement Act of 2003”.

1 **TITLE I—AMENDMENTS TO THE**  
 2 **INDIVIDUALS WITH DISABIL-**  
 3 **ITIES EDUCATION ACT**

4 **SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DIS-**  
 5 **ABILITIES EDUCATION ACT.**

6 Parts A through D of the Individuals with Disabil-  
 7 ities Education Act (20 U.S.C. 1400 et seq.) are amended  
 8 to read as follows:

9 **“PART A—GENERAL PROVISIONS**

10 **“SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS;**  
 11 **PURPOSES.**

12 “(a) **SHORT TITLE.**—This Act may be cited as the  
 13 ‘Individuals with Disabilities Education Act’.

14 “(b) **TABLE OF CONTENTS.**—The table of contents  
 15 for this Act is as follows:

**“PART A—GENERAL PROVISIONS**

“Sec. 601. Short title; table of contents; findings; purposes.

“Sec. 602. Definitions.

“Sec. 603. Office of Special Education Programs.

“Sec. 604. Abrogation of State sovereign immunity.

“Sec. 605. Acquisition of equipment; construction or alteration of facilities.

“Sec. 606. Employment of individuals with disabilities.

“Sec. 607. Requirements for prescribing regulations.

“Sec. 608. State administration.

“Sec. 609. Report to Congress

**“PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH**  
**DISABILITIES**

“Sec. 611. Authorization; allotment; use of funds; authorization of appro-  
 priations.

“Sec. 612. State eligibility.

“Sec. 613. Local educational agency eligibility.

“Sec. 614. Evaluations, eligibility determinations, individualized education  
 programs, and educational placements.

“Sec. 615. Procedural safeguards.

“Sec. 616. Monitoring, technical assistance, and enforcement.

- “Sec. 617. Administration.
- “Sec. 618. Program information.
- “Sec. 619. Preschool grants.

“PART C—INFANTS AND TODDLERS WITH DISABILITIES

- “Sec. 631. Findings and policy.
- “Sec. 632. Definitions.
- “Sec. 633. General authority.
- “Sec. 634. Eligibility.
- “Sec. 635. Requirements for statewide system.
- “Sec. 636. Individualized family service plan.
- “Sec. 637. State application and assurances.
- “Sec. 638. Uses of funds.
- “Sec. 639. Procedural safeguards.
- “Sec. 640. Payor of last resort.
- “Sec. 641. State Interagency Coordinating Council.
- “Sec. 642. Federal administration.
- “Sec. 643. Allocation of funds.
- “Sec. 644. Authorization of appropriations.

“PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN  
WITH DISABILITIES

- “Sec. 650. Findings and purpose.

“SUBPART 1—STATE PERSONNEL PREPARATION AND PROFESSIONAL  
DEVELOPMENT GRANTS

- “Sec. 651. Purpose; definition; program authority.
- “Sec. 652. Eligibility and collaborative process.
- “Sec. 653. Applications.
- “Sec. 654. Use of funds.
- “Sec. 655. Authorization of appropriations.

“SUBPART 2—SCIENTIFICALLY BASED RESEARCH, TECHNICAL ASSISTANCE,  
MODEL DEMONSTRATION PROJECTS, AND DISSEMINATION OF INFORMATION

- “Sec. 660. Purpose.
- “Sec. 661. Administrative provisions.
- “Sec. 662. Research to improve results for children with disabilities.
- “Sec. 663. Technical assistance, demonstration projects, dissemination of  
information, and implementation of scientifically based re-  
search.
- “Sec. 664. Personnel development to improve services and results for chil-  
dren with disabilities.
- “Sec. 665. Studies and evaluations.

“SUBPART 3—SUPPORTS TO IMPROVE RESULTS FOR CHILDREN WITH  
DISABILITIES

- “Sec. 670. Purposes.
- “Sec. 671. Parent training and information centers.
- “Sec. 672. Community parent resource centers.
- “Sec. 673. Technical assistance for parent training and information cen-  
ters.

“Sec. 674. Technology development, demonstration, and utilization; and media services.

“Sec. 675. Authorization of appropriations.

“SUBPART 4—INTERIM ALTERNATIVE EDUCATIONAL SETTINGS, BEHAVIORAL SUPPORTS, AND WHOLE SCHOOL INTERVENTIONS

“Sec. 681. Purpose.

“Sec. 682. Definition of eligible entity.

“Sec. 683. Program authorized.

“Sec. 684. Program evaluations.

“Sec. 685. Authorization of appropriations.

1 “(c) FINDINGS.—Congress finds the following:

2 “(1) Disability is a natural part of the human  
3 experience and in no way diminishes the right of in-  
4 dividuals to participate in or contribute to society.  
5 Improving educational results for children with dis-  
6 abilities is an essential element of our national policy  
7 of ensuring equality of opportunity, full participa-  
8 tion, independent living, and economic self-suffi-  
9 ciency for individuals with disabilities.

10 “(2) Before the date of the enactment of the  
11 Education for All Handicapped Children Act of  
12 1975 (Public Law 94–142), the educational needs of  
13 millions of children with disabilities were not being  
14 fully met because—

15 “(A) the children did not receive appro-  
16 priate educational services;

17 “(B) the children were excluded entirely  
18 from the public school system and from being  
19 educated with their peers;

1           “(C) undiagnosed disabilities prevented the  
2           children from having a successful educational  
3           experience; or

4           “(D) a lack of adequate resources within  
5           the public school system forced families to find  
6           services outside the public school system.

7           “(3) Since the enactment and implementation  
8           of the Education for All Handicapped Children Act  
9           of 1975, this Act has been successful in ensuring  
10          children with disabilities and the families of such  
11          children access to a free appropriate public edu-  
12          cation and in improving educational results for chil-  
13          dren with disabilities.

14          “(4) However, the implementation of this Act  
15          has been impeded by low expectations, and an insuf-  
16          ficient focus on applying replicable research on prov-  
17          en methods of teaching and learning for children  
18          with disabilities.

19          “(5) Over 25 years of research and experience  
20          has demonstrated that the education of children with  
21          disabilities can be made more effective by—

22               “(A) having high expectations for such  
23               children and ensuring their access to the gen-  
24               eral education curriculum in the regular class-

1 room to the maximum extent possible in order  
2 to—

3 “(i) meet developmental goals and, to  
4 the maximum extent possible, the chal-  
5 lenging expectations that have been estab-  
6 lished for all children; and

7 “(ii) be prepared to lead productive  
8 and independent adult lives, to the max-  
9 imum extent possible;

10 “(B) strengthening the role and responsi-  
11 bility of parents and ensuring that families of  
12 such children have meaningful opportunities to  
13 participate in the education of their children at  
14 school and at home;

15 “(C) coordinating this Act with other local,  
16 educational service agency, State, and Federal  
17 school improvement efforts, including improve-  
18 ment efforts under the Elementary and Sec-  
19 ondary Education Act of 2001, in order to en-  
20 sure that such children benefit from such ef-  
21 forts and that special education can become a  
22 service for such children rather than a place  
23 where they are sent;

24 “(D) providing appropriate special edu-  
25 cation and related services, and aids and sup-

ports in the regular classroom, to such children,  
whenever appropriate;

“(E) supporting high-quality, intensive  
preservice preparation professional development  
for all personnel who work with children with  
disabilities in order to ensure that such per-  
sonnel have the skills and knowledge necessary  
to improve the academic achievement and func-  
tional performance of children with disabilities,  
including the use of scientifically based instruc-  
tional practices, to the maximum extent pos-  
sible;

“(F) providing incentives for whole-school  
approaches, scientifically based early reading  
programs, positive behavioral interventions and  
supports, and prereferral intervention to reduce  
the need to label children as disabled in order  
to address their learning and behavioral needs;

“(G) focusing resources on teaching and  
learning while reducing paperwork and require-  
ments that do not assist in improving edu-  
cational results; and

“(H) supporting the development and use  
of technology, including assistive technology de-

1           vices and assistive technology services, to maxi-  
2           mize accessibility for children with disabilities.

3           “(6) While States, local educational agencies,  
4           and educational service agencies are primarily re-  
5           sponsible for providing an education for all children  
6           with disabilities, it is in the national interest that  
7           the Federal Government have a supporting role in  
8           assisting State and local efforts to educate children  
9           with disabilities in order to improve results for such  
10          children and to ensure equal protection of the law.

11          “(7) A more equitable allocation of resources is  
12          essential for the Federal Government to meet its re-  
13          sponsibility to provide an equal educational oppor-  
14          tunity for all individuals.

15          “(8)(A) The Federal Government must be re-  
16          sponsive to the growing needs of an increasingly  
17          more diverse society.

18          “(B) America’s ethnic profile is rapidly chang-  
19          ing. In the year 2000, 1 of every 3 persons in the  
20          United States was a member of a minority group or  
21          was limited English proficient.

22          “(C) Minority children comprise an increasing  
23          percentage of public school students.

24          “(D) With such changing demographics, re-  
25          cruitment efforts for special education personnel



1 should focus on increasing the participation of mi-  
2 norities in the teaching profession.

3 “(9)(A) The limited English proficient popu-  
4 lation is the fastest growing in our Nation, and the  
5 growth is occurring in many parts of our Nation.

6 “(B) Studies have documented apparent dis-  
7 crepancies in the levels of referral and placement of  
8 limited English proficient children in special edu-  
9 cation.

10 “(C) This poses a special challenge for special  
11 education in the referral of, assessment of, and serv-  
12 ices for, our Nation’s students from non-English  
13 language backgrounds.

14 “(10)(A) Greater efforts are needed to prevent  
15 the intensification of problems connected with  
16 mislabeling and high dropout rates among minority  
17 children with disabilities.

18 “(B) More minority children continue to be  
19 served in special education than would be expected  
20 from the percentage of minority students in the gen-  
21 eral school population.

22 “(C) African-American children are over identi-  
23 fied as having mental retardation and emotional dis-  
24 turbance at rates greater than their white counter-  
25 parts.

1           “(D) In the 1998–1999 school year, African-  
2           American children represented just 14.8 percent of  
3           the population aged 6 through 21, but comprised  
4           20.2 percent of all children with disabilities.

5           “(E) Studies have found that schools with pre-  
6           dominately Caucasian students and teachers have  
7           placed disproportionately high numbers of their mi-  
8           nority students into special education.

9           “(11)(A) As the number of minority students in  
10          special education increases, the number of minority  
11          teachers and related services personnel produced in  
12          colleges and universities continues to decrease.

13          “(B) The opportunity for minority individuals,  
14          organizations, and Historically Black Colleges and  
15          Universities to participate fully in awards for grants  
16          and contracts, boards of organizations receiving  
17          funds under this Act, and peer review panels, and in  
18          the training of professionals in the area of special  
19          education is essential if we are to obtain greater suc-  
20          cess in the education of minority children with dis-  
21          abilities.

22          “(d) PURPOSES.—The purposes of this title are—

23               “(1)(A) to ensure that all children with disabil-  
24               ities have available to them a free appropriate public  
25               education that emphasizes special education and re-

1       lated services designed to meet their unique needs  
2       and prepare them for employment, further edu-  
3       cation, and independent living;

4               “(B) to ensure that the rights of children with  
5       disabilities and parents of such children are pro-  
6       tected; and

7               “(C) to assist States, localities, educational  
8       service agencies, and Federal agencies to provide for  
9       the education of all children with disabilities;

10              “(2) to assist States in the implementation of  
11       a Statewide, comprehensive, coordinated, multidisci-  
12       plinary, interagency system of early intervention  
13       services for infants and toddlers with disabilities and  
14       their families;

15              “(3) to ensure that educators and parents have  
16       the necessary tools to improve educational results for  
17       children with disabilities by supporting systemic-  
18       change activities; coordinated research and personnel  
19       preparation; coordinated technical assistance, dis-  
20       semination, and support; and technology develop-  
21       ment and media services; and

22              “(4) to assess, and ensure the effectiveness of,  
23       efforts to educate children with disabilities.

24   **“SEC. 602. DEFINITIONS.**

25       “Except as otherwise provided, as used in this Act:

1           “(1) ASSISTIVE TECHNOLOGY DEVICE.—The  
 2           term ‘assistive technology device’ means any item,  
 3           piece of equipment, or product system, whether ac-  
 4           quired commercially off the shelf, modified, or cus-  
 5           tomized, that is used to increase, maintain, or im-  
 6           prove functional capabilities of a child with a dis-  
 7           ability.

8           “(2) ASSISTIVE TECHNOLOGY SERVICE.—The  
 9           term ‘assistive technology service’ means any service  
 10          that directly assists a child with a disability in the  
 11          selection, acquisition, or use of an assistive tech-  
 12          nology device. Such term includes—

13               “(A) the evaluation of the needs of such  
 14               child, including a functional evaluation of the  
 15               child in the child’s customary environment;

16               “(B) purchasing, leasing, or otherwise pro-  
 17               viding for the acquisition of assistive technology  
 18               devices by such child;

19               “(C) selecting, designing, fitting, custom-  
 20               izing, adapting, applying, maintaining, repair-  
 21               ing, or replacing of assistive technology devices;

22               “(D) coordinating and using other thera-  
 23               pies, interventions, or services with assistive  
 24               technology devices, such as those associated

1 with existing education and rehabilitation plans  
2 and programs;

3 “(E) training or technical assistance for  
4 such child, or, where appropriate, the family of  
5 such child; and

6 “(F) training or technical assistance for  
7 professionals (including individuals providing  
8 education and rehabilitation services), employ-  
9 ers, or other individuals who provide services to,  
10 employ, or are otherwise substantially involved  
11 in the major life functions of such child.

12 “(3) CHILD WITH A DISABILITY.—

13 “(A) IN GENERAL.—The term ‘child with a  
14 disability’ means a child—

15 “(i) with mental retardation, hearing  
16 impairments (including deafness), speech  
17 or language impairments, visual impair-  
18 ments (including blindness), serious emo-  
19 tional disturbance (hereinafter referred to  
20 as ‘emotional disturbance’), orthopedic im-  
21 pairments, autism, traumatic brain injury,  
22 other health impairments, or specific learn-  
23 ing disabilities; and

24 “(ii) who, by reason thereof, needs  
25 special education and related services.

“(B) CHILD AGED 3 THROUGH 9.—The term ‘child with a disability’ for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—

“(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

“(ii) who, by reason thereof, needs special education and related services.

“(4) CORE ACADEMIC SUBJECT.—The term ‘core academic subject’ has the meaning given the term in section 9101(11) of the Elementary and Secondary Education Act of 1965.

“(5) EDUCATIONAL SERVICE AGENCY.—The term ‘educational service agency’—

“(A) means a regional public multiservice agency—

1 “(i) authorized by State law to de-  
 2 velop, manage, and provide services or pro-  
 3 grams to local educational agencies; and

4 “(ii) recognized as an administrative  
 5 agency for purposes of the provision of  
 6 special education and related services pro-  
 7 vided within public elementary schools and  
 8 secondary schools of the State; and

9 “(B) includes any other public institution  
 10 or agency having administrative control and di-  
 11 rection over a public elementary school or sec-  
 12 ondary school.

13 “(6) ELEMENTARY SCHOOL.—The term ‘ele-  
 14 mentary school’ means a nonprofit institutional day  
 15 or residential school that provides elementary edu-  
 16 cation, as determined under State law.

17 “(7) EQUIPMENT.—The term ‘equipment’ in-  
 18 cludes—

19 “(A) machinery, utilities, and built-in  
 20 equipment, and any necessary enclosures or  
 21 structures to house such machinery, utilities, or  
 22 equipment; and

23 “(B) all other items necessary for the  
 24 functioning of a particular facility as a facility  
 25 for the provision of educational services, includ-

ing items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

“(8) EXCESS COSTS.—The term ‘excess costs’ means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting—

“(A) amounts received—

“(i) under part B of this title;

“(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; and

“(iii) under parts A and B of title III of that Act; and

“(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

“(9) FREE APPROPRIATE PUBLIC EDUCATION.—The term ‘free appropriate public edu-



1 cation’ means special education and related services  
2 that—

3 “(A) have been provided at public expense,  
4 under public supervision and direction, and  
5 without charge;

6 “(B) meet the standards of the State edu-  
7 cational agency;

8 “(C) include an appropriate preschool, ele-  
9 mentary school, or secondary school education  
10 in the State involved; and

11 “(D) are provided in conformity with the  
12 individualized education program required  
13 under section 614(d).

14 “(10) HIGHLY QUALIFIED; CONSULTATIVE  
15 SERVICES.—

16 “(A) HIGHLY QUALIFIED.—The term  
17 ‘highly qualified’, when used with respect to any  
18 special education teacher teaching in a State,  
19 means a teacher who—

20 “(i)(I) meets the definition of that  
21 term in section 9101(23) of the Elemen-  
22 tary and Secondary Education Act of  
23 1965, including full State certification as a  
24 special education teacher through a State  
25 approved special education teacher prepa-

1           ration program (including certification ob-  
2           tained through State or local educational  
3           agency approved alternative routes); or

4           “(II) has passed a State special edu-  
5           cation licensing examination and holds a li-  
6           cense to teach special education in such  
7           State,

8           except that when used with respect to any  
9           teacher teaching in a public charter school, the  
10          term means that the teacher meets the require-  
11          ments set forth in the State’s statute on public  
12          charter schools; and

13          “(ii) does not have certification or li-  
14          censure requirements waived on an emer-  
15          gency, temporary, or provisional basis;

16          “(iii) if the teacher provides only con-  
17          sultative services to a regular education  
18          teacher with respect to a core academic  
19          subject, the special education teacher shall  
20          meet the standards for subject knowledge  
21          and teaching skills described in section  
22          9101(23) of the Elementary and Sec-  
23          ondary Education Act of 1965 that apply  
24          to elementary school teachers; and

1 “(iv) if the teacher provides instruc-  
 2 tion in a core academic subject to middle  
 3 or secondary students who are performing  
 4 at the elementary level, the teacher shall  
 5 meet the standards for subject knowledge  
 6 and teaching skills described in section  
 7 9101(23) of the Elementary and Sec-  
 8 ondary Education Act of 1965 that apply  
 9 to elementary school teachers.

10 “(B) CONSULTATIVE SERVICES.—As used  
 11 in subparagraph (A)(iii), the term ‘consultative  
 12 services’ means—

13 “(i) consultation on adapting cur-  
 14 ricula, using positive behavioral supports  
 15 and interventions, and selecting appro-  
 16 priate accommodations, and does not in-  
 17 clude direct instruction of students; or

18 “(ii) teaching in collaboration with a  
 19 regular education teacher or teachers who  
 20 is or are highly qualified in the core aca-  
 21 demic subjects being taught.

22 “(11) INDIAN.—The term ‘Indian’ means an in-  
 23 dividual who is a member of an Indian tribe.

24 “(12) INDIAN TRIBE.—The term ‘Indian tribe’  
 25 means any Federal or State Indian tribe, band,

1 rancheria, pueblo, colony, or community, including  
 2 any Alaska Native village or regional village corpora-  
 3 tion (as defined in or established under the Alaska  
 4 Native Claims Settlement Act).

5 “(13) INDIVIDUALIZED EDUCATION PRO-  
 6 GRAM.—The term ‘individualized education program’  
 7 or ‘IEP’ means a written statement for each child  
 8 with a disability that is developed, reviewed, and re-  
 9 vised in accordance with section 614(d).

10 “(14) INDIVIDUALIZED FAMILY SERVICE  
 11 PLAN.—The term ‘individualized family service plan’  
 12 has the meaning given such term in section 636.

13 “(15) INFANT OR TODDLER WITH A DIS-  
 14 ABILITY.—The term ‘infant or toddler with a dis-  
 15 ability’ has the meaning given such term in section  
 16 632.

17 “(16) INSTITUTION OF HIGHER EDUCATION.—  
 18 The term ‘institution of higher education’—

19 “(A) has the meaning given such term in  
 20 section 101 (a) and (b) of the Higher Edu-  
 21 cation Act of 1965; and

22 “(B) also includes any community college  
 23 receiving funding from the Secretary of the In-  
 24 terior under the Tribally Controlled College or  
 25 University Assistance Act of 1978.

1 “(17) LOCAL EDUCATIONAL AGENCY.—

2 “(A) The term ‘local educational agency’  
3 means a public board of education or other pub-  
4 lic authority legally constituted within a State  
5 for either administrative control or direction of,  
6 or to perform a service function for, public ele-  
7 mentary schools or secondary schools in a city,  
8 county, township, school district, or other polit-  
9 ical subdivision of a State, or for such combina-  
10 tion of school districts or counties as are recog-  
11 nized in a State as an administrative agency for  
12 its public elementary schools or secondary  
13 schools.

14 “(B) The term includes—

15 “(i) an educational service agency, as  
16 defined in paragraph (4); and

17 “(ii) any other public institution or  
18 agency having administrative control and  
19 direction of a public elementary school or  
20 secondary school.

21 “(C) The term includes an elementary  
22 school or secondary school funded by the Bu-  
23 reau of Indian Affairs, but only to the extent  
24 that such inclusion makes the school eligible for  
25 programs for which specific eligibility is not

provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

“(18) NATIVE LANGUAGE.—The term ‘native language’, when used with respect to an individual of limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child.

“(19) NONPROFIT.—The term ‘nonprofit’, as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

“(20) OUTLYING AREA.—The term ‘outlying area’ means the United States Virgin Islands,

1 Guam, American Samoa, and the Commonwealth of  
2 the Northern Mariana Islands.

3 “(21) PARENT.—The term ‘parent’—

4 “(A) includes a legal guardian; and

5 “(B) except as used in sections 615(b)(2)  
6 and 639(a)(5), includes an individual assigned  
7 under either of those sections to be a surrogate  
8 parent.

9 “(22) PARENT ORGANIZATION.—The term ‘par-  
10 ent organization’ has the meaning given such term  
11 in section 671(g).

12 “(23) PARENT TRAINING AND INFORMATION  
13 CENTER.—The term ‘parent training and informa-  
14 tion center’ means a center assisted under section  
15 671 or 672.

16 “(24) RELATED SERVICES.—The term ‘related  
17 services’ means transportation, and such develop-  
18 mental, corrective, and other supportive services (in-  
19 cluding speech-language pathology and audiology  
20 services, psychological services, physical and occupa-  
21 tional therapy, recreation, including therapeutic  
22 recreation, social work services, school health serv-  
23 ices, counseling services, including rehabilitation  
24 counseling, orientation and mobility services, and  
25 medical services, except that such medical services

1 shall be for diagnostic and evaluation purposes only)  
 2 as may be required to assist a child with a disability  
 3 to benefit from special education, and includes the  
 4 early identification and assessment of disabling con-  
 5 ditions in children.

6 “(25) SECONDARY SCHOOL.—The term ‘sec-  
 7 ondary school’ means a nonprofit institutional day or  
 8 residential school that provides secondary education,  
 9 as determined under State law, except that it does  
 10 not include any education beyond grade 12.

11 “(26) SECRETARY.—The term ‘Secretary’  
 12 means the Secretary of Education.

13 “(27) SPECIAL EDUCATION.—The term ‘special  
 14 education’ means specially designed instruction, at  
 15 no cost to parents, to meet the unique needs of a  
 16 child with a disability, including—

17 “(A) instruction conducted in the class-  
 18 room, in the home, in hospitals and institutions,  
 19 and in other settings; and

20 “(B) instruction in physical education.

21 “(28) SPECIFIC LEARNING DISABILITY.—

22 “(A) IN GENERAL.—The term ‘specific  
 23 learning disability’ means a disorder in 1 or  
 24 more of the basic psychological processes in-  
 25 volved in understanding or in using language,



1 spoken or written, which disorder may manifest  
2 itself in the imperfect ability to listen, think,  
3 speak, read, write, spell, or do mathematical  
4 calculations.

5 “(B) DISORDERS INCLUDED.—Such term  
6 includes such conditions as perceptual disabil-  
7 ities, brain injury, minimal brain dysfunction,  
8 dyslexia, and developmental aphasia.

9 “(C) DISORDERS NOT INCLUDED.—Such  
10 term does not include a learning problem that  
11 is primarily the result of visual, hearing, or  
12 motor disabilities, of mental retardation, of  
13 emotional disturbance, or of environmental, cul-  
14 tural, or economic disadvantage.

15 “(29) STATE.—The term ‘State’ means each of  
16 the 50 States, the District of Columbia, the Com-  
17 monwealth of Puerto Rico, and each of the outlying  
18 areas.

19 “(30) STATE EDUCATIONAL AGENCY.—The  
20 term ‘State educational agency’ means the State  
21 board of education or other agency or officer pri-  
22 marily responsible for the State supervision of public  
23 elementary schools and secondary schools, or, if  
24 there is no such officer or agency, an officer or  
25 agency designated by the Governor or by State law.

1 “(31) SUPPLEMENTARY AIDS AND SERVICES.—

2 The term ‘supplementary aids and services’ means  
3 aids, services, and other supports that are provided  
4 in regular education classes or other education-re-  
5 lated settings to enable children with disabilities to  
6 be educated with nondisabled children to the max-  
7 imum extent appropriate in accordance with section  
8 612(a)(5).

9 “(32) TRANSITION SERVICES.—The term ‘tran-  
10 sition services’ means a coordinated set of activities  
11 for a child with a disability (as defined in paragraph  
12 (3)(A)) that—

13 “(A) is designed to be within a results-ori-  
14 ented process, that is focused on improving the  
15 academic and functional achievement of the  
16 child with a disability to facilitate the child’s  
17 movement from school to post-school activities,  
18 including post-secondary education, vocational  
19 training, integrated employment (including sup-  
20 ported employment), continuing and adult edu-  
21 cation, adult services, independent living, or  
22 community participation;

23 “(B) is based on the individual child’s  
24 needs, taking into account the child’s capacity,  
25 preferences, and interests; and

1           “(C) includes instruction, related services,  
2           community experiences, the development of em-  
3           ployment and other post-school adult living ob-  
4           jectives, and, when appropriate, acquisition of  
5           daily living skills and functional vocational eval-  
6           uation.

7   **“SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.**

8           “(a) ESTABLISHMENT.—There shall be, within the  
9   Office of Special Education and Rehabilitative Services in  
10 the Department of Education, an Office of Special Edu-  
11 cation Programs, which shall be the principal agency in  
12 such Department for administering and carrying out this  
13 Act and other programs and activities concerning the edu-  
14 cation of children with disabilities.

15          “(b) DIRECTOR.—The Office established under sub-  
16 section (a) shall be headed by a Director who shall be se-  
17 lected by the Secretary and shall report directly to the As-  
18 sistant Secretary for Special Education and Rehabilitative  
19 Services.

20          “(c) VOLUNTARY AND UNCOMPENSATED SERV-  
21 ICES.—Notwithstanding section 1342 of title 31, United  
22 States Code, the Secretary is authorized to accept vol-  
23 untary and uncompensated services in furtherance of the  
24 purposes of this Act.

1 **“SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.**

2 “(a) IN GENERAL.—A State shall not be immune  
3 under the 11th amendment to the Constitution of the  
4 United States from suit in Federal court for a violation  
5 of this Act.

6 “(b) REMEDIES.—In a suit against a State for a vio-  
7 lation of this Act, remedies (including remedies both at  
8 law and in equity) are available for such a violation to  
9 the same extent as those remedies are available for such  
10 a violation in the suit against any public entity other than  
11 a State.

12 “(c) EFFECTIVE DATE.—Subsections (a) and (b)  
13 apply with respect to violations that occur in whole or part  
14 after the date of enactment of the Education of the Handi-  
15 capped Act Amendments of 1990.

16 **“SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION**  
17 **OR ALTERATION OF FACILITIES.**

18 “(a) IN GENERAL.—If the Secretary determines that  
19 a program authorized under this Act will be improved by  
20 permitting program funds to be used to acquire appro-  
21 priate equipment, or to construct new facilities or alter  
22 existing facilities, the Secretary is authorized to allow the  
23 use of those funds for those purposes.

24 “(b) COMPLIANCE WITH CERTAIN REGULATIONS.—  
25 Any construction of new facilities or alteration of existing

1 facilities under subsection (a) shall comply with the re-  
 2 quirements of—

3 “(1) appendix A of part 36 of title 28, Code of  
 4 Federal Regulations (commonly known as the  
 5 ‘Americans with Disabilities Accessibility Guidelines  
 6 for Buildings and Facilities’); or

7 “(2) appendix A of subpart 101–19.6 of title  
 8 41, Code of Federal Regulations (commonly known  
 9 as the ‘Uniform Federal Accessibility Standards’).

10 **“SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABIL-**  
 11 **ITIES.**

12 “The Secretary shall ensure that each recipient of as-  
 13 sistance under this Act makes positive efforts to employ  
 14 and advance in employment qualified individuals with dis-  
 15 abilities in programs assisted under this Act.

16 **“SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULA-**  
 17 **TIONS.**

18 “(a) IN GENERAL.—The Secretary may issue such  
 19 regulations as are necessary to ensure that there is compli-  
 20 ance with this Act.

21 “(b) PROTECTIONS PROVIDED TO CHILDREN.—The  
 22 Secretary may not implement, or publish in final form,  
 23 any regulation prescribed pursuant to this Act that—

24 “(1) violates or contradicts any provision of this  
 25 Act; and

1           “(2) procedurally or substantively lessens the  
2           protections provided to children with disabilities  
3           under this Act, as embodied in regulations in effect  
4           on July 20, 1983 (particularly as such protections  
5           related to parental consent to initial evaluation or  
6           initial placement in special education, least restric-  
7           tive environment, related services, timelines, attend-  
8           ance of evaluation personnel at individualized edu-  
9           cation program meetings, or qualifications of per-  
10          sonnel), except to the extent that such regulation re-  
11          flects the clear and unequivocal intent of the Con-  
12          gress in legislation.

13          “(c) PUBLIC COMMENT PERIOD.—The Secretary  
14          shall provide a public comment period of not less than 60  
15          days on any regulation proposed under part B or part C  
16          of this Act on which an opportunity for public comment  
17          is otherwise required by law.

18          “(d) POLICY LETTERS AND STATEMENTS.—The Sec-  
19          retary may not issue policy letters or other statements (in-  
20          cluding letters or statements regarding issues of national  
21          significance) that—

22                 “(1) violate or contradict any provision of this  
23                 Act; or

24                 “(2) establish a rule that is required for compli-  
25                 ance with, and eligibility under, this Act without fol-

1       lowing the requirements of section 553 of title 5,  
2       United States Code.

3       “(e) EXPLANATION AND ASSURANCES.—Any written  
4 response by the Secretary under subsection (d) regarding  
5 a policy, question, or interpretation under part B of this  
6 Act shall include an explanation in the written response  
7 that—

8               “(1) such response is provided as informal guid-  
9       ance and is not legally binding;

10              “(2) when required, such response is issued in  
11 compliance with the requirements of section 553 of  
12 title 5, United States Code; and

13              “(3) such response represents the interpretation  
14 by the Department of Education of the applicable  
15 statutory or regulatory requirements in the context  
16 of the specific facts presented.

17       “(f) CORRESPONDENCE FROM DEPARTMENT OF  
18 EDUCATION DESCRIBING INTERPRETATIONS OF THIS  
19 ACT.—

20              “(1) IN GENERAL.—The Secretary shall, on a  
21 quarterly basis, publish in the Federal Register, and  
22 widely disseminate to interested entities through var-  
23 ious additional forms of communication, a list of  
24 correspondence from the Department of Education  
25 received by individuals during the previous quarter

1 that describes the interpretations of the Department  
 2 of Education of this Act or the regulations imple-  
 3 mented pursuant to this Act.

4 “(2) ADDITIONAL INFORMATION.—For each  
 5 item of correspondence published in a list under  
 6 paragraph (1), the Secretary shall—

7 “(A) identify the topic addressed by the  
 8 correspondence and shall include such other  
 9 summary information as the Secretary deter-  
 10 mines to be appropriate; and

11 “(B) ensure that all such correspondence  
 12 is issued, where applicable, in compliance with  
 13 the requirements of section 553 of title 5,  
 14 United States Code.

15 **“SEC. 608. STATE ADMINISTRATION.**

16 “(a) RULEMAKING.—Each State that receives funds  
 17 under this Act shall—

18 “(1) ensure that any State rules, regulations,  
 19 and policies relating to this Act conform to the pur-  
 20 poses of this Act; and

21 “(2) identify in writing to its local educational  
 22 agencies and the Secretary any such rule, regulation,  
 23 or policy as a State-imposed requirement that is not  
 24 required by this Act and Federal regulations.



1 “(b) SUPPORT AND FACILITATION.—State rules, reg-  
 2 ulations, and policies under this Act shall support and fa-  
 3 cilitate local educational agency and school-level systemic  
 4 reform designed to enable children with disabilities to meet  
 5 the challenging State student academic achievement  
 6 standards.

7 **“SEC. 609. REPORT TO CONGRESS.**

8 “The Comptroller General shall conduct a review of  
 9 Federal, State, and local requirements to determine which  
 10 requirements result in excessive paperwork completion  
 11 burdens for teachers, related services providers, and school  
 12 administrators, and shall report to Congress not later than  
 13 18 months after the date of enactment of the Individuals  
 14 with Disabilities Education Improvement Act of 2003 re-  
 15 garding such review along with strategic proposals for re-  
 16 ducing the paperwork burdens on teachers.

17 **“PART B—ASSISTANCE FOR EDU-**  
 18 **CATION OF ALL CHILDREN**  
 19 **WITH DISABILITIES**

20 **“SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS;**  
 21 **AUTHORIZATION OF APPROPRIATIONS.**

22 “(a) GRANTS TO STATES.—

23 “(1) PURPOSE OF GRANTS.—The Secretary  
 24 shall make grants to States and the outlying areas,  
 25 and provide funds to the Secretary of the Interior,

1 to assist them to provide special education and re-  
 2 lated services to children with disabilities in accord-  
 3 ance with this part.

4 “(2) MAXIMUM AMOUNT.—The maximum  
 5 amount available for awarding grants under this  
 6 part for any fiscal year is—

7 “(A) the total number of children with dis-  
 8 abilities in the 2002–2003 school year in the  
 9 States who received special education and re-  
 10 lated services and who were—

11 “(i) aged 3 through 5, if the State  
 12 was eligible for a grant under section 619;  
 13 and

14 “(ii) aged 6 through 21; multiplied by

15 “(B) 40 percent of the average per-pupil  
 16 expenditure in public elementary schools and  
 17 secondary schools in the United States; ad-  
 18 justed by

19 “(C) the rate of change in the sum of—

20 “(i) 85 percent of the change in the  
 21 nationwide total of the population de-  
 22 scribed in (d)(3)(A)(i)(II); and

23 “(ii) 15 percent of the change in the  
 24 nationwide total of the population de-  
 25 scribed in (d)(3)(A)(i)(III).

1       “(b) OUTLYING AREAS AND FREELY ASSOCIATED  
2 STATES.—

3               “(1) FUNDS RESERVED.—From the amount ap-  
4 propriated for any fiscal year under subsection (i),  
5 the Secretary shall reserve not more than 1 percent,  
6 which shall be used—

7                       “(A) to provide assistance to the outlying  
8 areas in accordance with their respective popu-  
9 lations of individuals aged 3 through 21; and

10                      “(B) to provide each of the freely associ-  
11 ated States grants that do not exceed the level  
12 each such freely associated State received for  
13 fiscal year 2003 under this part, but only if the  
14 freely associated State meets the requirements  
15 of section 611(b)(2)(C) as such section was in  
16 effect on the day before the date of enactment  
17 of the Individuals with Disabilities Education  
18 Improvement Act of 2003.

19               “(2) SPECIAL RULE.—The provisions of Public  
20 Law 95–134, permitting the consolidation of grants  
21 by the outlying areas, shall not apply to funds pro-  
22 vided to the outlying areas or the freely associated  
23 States under this section.

24               “(3) DEFINITION.—As used in this subsection,  
25 the term ‘freely associated States’ means the Repub-

1       lic of the Marshall Islands, the Federated States of  
2       Micronesia, and the Republic of Palau.

3       “(c) SECRETARY OF THE INTERIOR.—From the  
4       amount appropriated for any fiscal year under subsection  
5       (i), the Secretary shall reserve 1.226 percent to provide  
6       assistance to the Secretary of the Interior in accordance  
7       with subsection (i).

8       “(d) ALLOCATIONS TO STATES.—

9               “(1) IN GENERAL.—After reserving funds for  
10       studies and evaluations under section 665, and for  
11       payments to the outlying areas, the freely associated  
12       States, and the Secretary of the Interior under sub-  
13       sections (b) and (c) for a fiscal year, the Secretary  
14       shall allocate the remaining amount among the  
15       States in accordance with this subsection.

16              “(2) SPECIAL RULE FOR USE OF FISCAL YEAR  
17       1999 AMOUNT.—If a State received any funds under  
18       this section for fiscal year 1999 on the basis of chil-  
19       dren aged 3 through 5, but does not make a free ap-  
20       propriate public education available to all children  
21       with disabilities aged 3 through 5 in the State in  
22       any subsequent fiscal year, the Secretary shall com-  
23       pute the State’s amount for fiscal year 1999, solely  
24       for the purpose of calculating the State’s allocation  
25       in that subsequent year under paragraph (3) or (4),

1 by subtracting the amount allocated to the State for  
 2 fiscal year 1999 on the basis of those children.

3 “(3) INCREASE IN FUNDS.—If the amount  
 4 available for allocations to States under paragraph  
 5 (1) for a fiscal year is equal to or greater than the  
 6 amount allocated to the States under this paragraph  
 7 for the preceding fiscal year, those allocations shall  
 8 be calculated as follows:

9 “(A) ALLOCATION OF INCREASE.—

10 “(i) IN GENERAL.—Except as pro-  
 11 vided in subparagraph (B), the Secretary  
 12 shall allocate for the fiscal year—

13 “(I) to each State the amount  
 14 the State received under this section  
 15 for fiscal year 1999;

16 “(II) 85 percent of any remain-  
 17 ing funds to States on the basis of the  
 18 States’ relative populations of children  
 19 aged 3 through 21 who are of the  
 20 same age as children with disabilities  
 21 for whom the State ensures the avail-  
 22 ability of a free appropriate public  
 23 education under this part; and

24 “(III) 15 percent of those re-  
 25 maining funds to States on the basis

1 of the States' relative populations of  
 2 children described in subclause (II)  
 3 who are living in poverty.

4 “(ii) DATA.—For the purpose of mak-  
 5 ing grants under this paragraph, the Sec-  
 6 retary shall use the most recent population  
 7 data, including data on children living in  
 8 poverty, that are available and satisfactory  
 9 to the Secretary.

10 “(B) LIMITATIONS.—Notwithstanding sub-  
 11 paragraph (A), allocations under this paragraph  
 12 shall be subject to the following:

13 “(i) PRECEDING YEAR ALLOCATION.—  
 14 No State's allocation shall be less than its  
 15 allocation under this section for the pre-  
 16 ceding fiscal year.

17 “(ii) MINIMUM.—No State's allocation  
 18 shall be less than the greatest of—

19 “(I) the sum of—

20 “(aa) the amount the State  
 21 received under this section for  
 22 fiscal year 1999; and

23 “(bb)  $\frac{1}{3}$  of 1 percent of the  
 24 amount by which the amount ap-  
 25 propriated under subsection (i)

1 for the fiscal year exceeds the  
 2 amount appropriated for this sec-  
 3 tion for fiscal year 1999;

4 “(II) the sum of—

5 “(aa) the amount the State  
 6 received under this section for  
 7 the preceding fiscal year; and

8 “(bb) that amount multi-  
 9 plied by the percentage by which  
 10 the increase in the funds appro-  
 11 priated for this section from the  
 12 preceding fiscal year exceeds 1.5  
 13 percent; or

14 “(III) the sum of—

15 “(aa) the amount the State  
 16 received under this section for  
 17 the preceding fiscal year; and

18 “(bb) that amount multi-  
 19 plied by 90 percent of the per-  
 20 centage increase in the amount  
 21 appropriated for this section  
 22 from the preceding fiscal year.

23 “(iii) MAXIMUM.—Notwithstanding  
 24 clause (ii), no State’s allocation under this  
 25 paragraph shall exceed the sum of—

1                   “(I) the amount the State re-  
2                   ceived under this section for the pre-  
3                   ceding fiscal year; and

4                   “(II) that amount multiplied by  
5                   the sum of 1.5 percent and the per-  
6                   centage increase in the amount appro-  
7                   priated under this section from the  
8                   preceding fiscal year.

9                   “(C)    RATABLE    REDUCTION.—If    the  
10                  amount available for allocations under this  
11                  paragraph is insufficient to pay those alloca-  
12                  tions in full, those allocations shall be ratably  
13                  reduced, subject to subparagraph (B)(i).

14               “(4)   DECREASE IN FUNDS.—If the amount  
15               available for allocations to States under paragraph  
16               (1) for a fiscal year is less than the amount allo-  
17               cated to the States under this section for the pre-  
18               ceding fiscal year, those allocations shall be cal-  
19               culated as follows:

20               “(A)   AMOUNTS GREATER THAN FISCAL  
21               YEAR 1999 ALLOCATIONS.—If the amount avail-  
22               able for allocations is greater than the amount  
23               allocated to the States for fiscal year 1999,  
24               each State shall be allocated the sum of—



1 “(i) the amount the State received  
2 under this section for fiscal year 1999; and

3 “(ii) an amount that bears the same  
4 relation to any remaining funds as the in-  
5 crease the State received under this section  
6 for the preceding fiscal year over fiscal  
7 year 1999 bears to the total of all such in-  
8 creases for all States.

9 “(B) AMOUNTS EQUAL TO OR LESS THAN  
10 FISCAL YEAR 1999 ALLOCATIONS.—

11 “(i) IN GENERAL.—If the amount  
12 available for allocations under this para-  
13 graph is equal to or less than the amount  
14 allocated to the States for fiscal year 1999,  
15 each State shall be allocated the amount  
16 the State received for fiscal year 1999.

17 “(ii) RATABLE REDUCTION.—If the  
18 amount available for allocations under this  
19 paragraph is insufficient to make the allo-  
20 cations described in clause (i), those alloca-  
21 tions shall be ratably reduced.

22 “(e) STATE-LEVEL ACTIVITIES.—

23 “(1) STATE ADMINISTRATION.—

24 “(A) IN GENERAL.—For the purpose of  
25 administering this part, including paragraph

(3), section 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities—

“(i) each State may reserve not more than the maximum amount the State was eligible to reserve for State administration for fiscal year 2003 or \$800,000 (adjusted by the cumulative rate of inflation since fiscal year 2003 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

“(ii) each outlying area may reserve not more than 5 percent of the amount the outlying area receives under subsection (b) for any fiscal year or \$35,000, whichever is greater.

“(B) PART C.—Funds reserved under subparagraph (A) may be used for the administration of part C, if the State educational agency is the lead agency for the State under that part.

1           “(C) CERTIFICATION.—Prior to expendi-  
 2           ture of funds under this paragraph, the State  
 3           shall certify to the Secretary that the arrange-  
 4           ments to establish responsibility for services  
 5           pursuant to section 612(a)(12)(A) are current.

6           “(2) OTHER STATE-LEVEL ACTIVITIES.—

7           “(A) IN GENERAL.—For the purpose of  
 8           providing State-level activities, each State may  
 9           reserve for each of the fiscal years 2004 and  
 10          2005, not more than 10 percent of the amount  
 11          that remains after subtracting the amount re-  
 12          served under paragraph (1) from the amount of  
 13          the State’s allocation under subsection (d) for  
 14          fiscal years 2004 and 2005, respectively. For  
 15          fiscal years 2006, 2007, 2008, and 2009, the  
 16          State may reserve the maximum amount the  
 17          State was eligible to reserve under the pre-  
 18          ceding sentence for fiscal year 2005 (adjusted  
 19          by the cumulative rate of inflation since fiscal  
 20          year 2005 as measured by the percentage in-  
 21          crease, if any, in the Consumer Price Index For  
 22          All Urban Consumers, published by the Bureau  
 23          of Labor Statistics of the Department of  
 24          Labor).

1           “(B) REQUIRED ACTIVITIES.—Funds re-  
2 served under subparagraph (A) shall be used to  
3 carry out the following activities:

4           “(i) For monitoring, enforcement and  
5 complaint investigation.

6           “(ii) To establish and implement the  
7 mediation processes required by section  
8 615(e)(1), including providing for the costs  
9 of mediators and support personnel;

10          “(iii) To fund the State protection  
11 and advocacy system, or other legal organi-  
12 zations that have expertise in—

13           “(I) dispute resolution and due  
14 process;

15           “(II) efforts to educate families  
16 regarding due process;

17           “(III) voluntary mediation; and

18           “(IV) the opportunity to resolve  
19 complaints.

20          “(C) AUTHORIZED ACTIVITIES.—Funds re-  
21 served under subparagraph (A) may be used to  
22 carry out the following activities:

23           “(i) To provide technical assistance,  
24 personnel development and training.

1           “(ii) To support paperwork reduction  
2           activities, including expanding the use of  
3           technology in the IEP process.

4           “(iii) To assist local educational agen-  
5           cies in providing positive behavioral inter-  
6           ventions and supports and mental health  
7           services for children with disabilities.

8           “(iv) To improve the use of technology  
9           in the classroom by children with disabil-  
10          ities to enhance learning.

11          “(v) To support the development and  
12          use of technology, including universally de-  
13          signed technologies and assistive tech-  
14          nology devices, to maximize accessibility to  
15          the general curriculum for students with  
16          disabilities.

17          “(vi) Development and implementa-  
18          tion of transition programs, including co-  
19          ordination of services with agencies in-  
20          volved in supporting the transition of stu-  
21          dents with disabilities to post-secondary  
22          activities.

23          “(vii) To assist local educational agen-  
24          cies in meeting personnel shortages.

1           “(viii) To support capacity building  
2           activities and improve the delivery of serv-  
3           ices by local educational agencies to im-  
4           prove results for children with disabilities.

5           “(ix) Alternative programming for  
6           children who have been expelled from  
7           school, and services for children in correc-  
8           tional facilities, children enrolled in State-  
9           operated or State-supported schools, and  
10          children in charter schools.

11          “(x) To support the development and  
12          provision of appropriate accommodations  
13          for children with disabilities, or the devel-  
14          opment and provision of alternate assess-  
15          ments that are valid and reliable for as-  
16          sessing the performance of children with  
17          disabilities, in accordance with sections  
18          1111(b) and 6111 of the Elementary and  
19          Secondary Education Act of 1965.

20          “(3) LOCAL EDUCATIONAL AGENCY RISK  
21          POOL.—

22          “(A) IN GENERAL.—For the purpose of as-  
23          sisting local educational agencies (and charter  
24          schools that are local educational agencies) in  
25          addressing the needs of high-need children and

1 the unanticipated enrollment of other children  
2 eligible for service under this part, each State  
3 shall reserve for each of the fiscal years 2004  
4 through 2009, 2 percent of the amount that re-  
5 mains after subtracting the amount reserved  
6 under paragraph (1) from the amount of the  
7 State's allocation under subsection (d) for each  
8 of the fiscal years 2004 through 2009, respec-  
9 tively, to—

10 “(i) establish a high-cost fund; and

11 “(ii) make disbursements from the  
12 high-cost fund to local educational agencies  
13 in accordance with this paragraph.

14 “(B) REQUIRED DISBURSEMENTS FROM  
15 THE FUND.—Each State educational agency  
16 shall make disbursements from the fund estab-  
17 lished under subparagraph (A) to local edu-  
18 cational agencies to pay the percentage, de-  
19 scribed in subparagraph (D), of the costs of  
20 providing a free appropriate public education to  
21 high-need children.

22 “(C) APPLICATION.—A local educational  
23 agency that desires a disbursement under this  
24 subsection shall submit an application to the  
25 State educational agency at such time, in such

1 manner, and containing such information as the  
2 State educational agency may require. Such ap-  
3 plication shall include assurances that funds  
4 provided under this paragraph shall not be used  
5 to pay costs that otherwise would be reimburs-  
6 able as medical assistance for a child with a  
7 disability under the State medicaid program  
8 under title XIX of the Social Security Act.

9 “(D) DISBURSEMENTS.—

10 “(i) IN GENERAL.—A State edu-  
11 cational agency shall make a disbursement  
12 to a local educational agency that submits  
13 an application under subparagraph (C) in  
14 an amount that is equal to 75 percent of  
15 the costs that are in excess of 4 times the  
16 average per-pupil expenditure in the  
17 United States or in the State where the  
18 child resides (whichever average per-pupil  
19 expenditure is lower) associated with edu-  
20 cating each high need child served by such  
21 local educational agency in a fiscal year for  
22 whom such agency desires a disbursement.

23 “(ii) APPROPRIATE COSTS.—The costs  
24 associated with educating a high need child  
25 under clause (i) are only those costs associ-



1           ated with providing direct special education  
2           and related services to such child that are  
3           identified in such child's appropriately de-  
4           veloped IEP.

5           “(E) LEGAL FEES.—The disbursements  
6           under subparagraph (D) shall not support legal  
7           fees, court costs, or other costs associated with  
8           a cause of action brought on behalf of such  
9           child to ensure a free appropriate public edu-  
10          cation for such child.

11          “(F) PERMISSIBLE DISBURSEMENTS FROM  
12          REMAINING FUNDS.—A State educational agen-  
13          cy may make disbursements to local educational  
14          agencies from any funds that are remaining in  
15          the high cost fund after making the required  
16          disbursements under subparagraph (D) for a  
17          fiscal year for the following purposes:

18               “(i) To pay the costs associated with  
19               serving children with disabilities who  
20               moved into the areas served by such local  
21               agencies after the budget for the following  
22               school year had been finalized to assist the  
23               local educational agencies in providing a  
24               free appropriate public education for such  
25               children in such year.

1           “(ii) To compensate local educational  
2           agencies for extraordinary costs, as deter-  
3           mined by the State, of any children eligible  
4           for services under this part due to—

5                   “(I) unexpected enrollment or  
6                   placement of children eligible for serv-  
7                   ices under this part; or

8                   “(II) a significant underestimate  
9                   of the average cost of providing serv-  
10                  ices to children eligible for services  
11                  under this part.

12           “(G) REMAINING FUNDS.—Funds reserved  
13           under subparagraph (A) in any fiscal year but  
14           not expended in that fiscal year pursuant to  
15           subparagraph (D) or subparagraph (F) shall—

16                   “(i) be allocated to local educational  
17                   agencies pursuant to subparagraphs (D) or  
18                   (F) for the next fiscal year; or

19                   “(ii) be allocated to local educational  
20                   agencies in the same manner as funds are  
21                   allocated to local educational agencies  
22                   under subsection (f).

23           “(H) ASSURANCE OF A FREE APPRO-  
24           PRIATE PUBLIC EDUCATION.—Nothing in this  
25           section shall be construed—

1 “(i) to limit or condition the right of  
 2 a child with a disability who is assisted  
 3 under this part to receive a free appro-  
 4 priate public education pursuant to section  
 5 612(a)(1) in a least restrictive environment  
 6 pursuant to section 612(a)(5); or

7 “(ii) to authorize a State educational  
 8 agency or local educational agency to indi-  
 9 cate a limit on what is expected to be  
 10 spent on the education of a child with a  
 11 disability.

12 “(I) MEDICAID SERVICES NOT AF-  
 13 FECTED.—Disbursements provided under this  
 14 subsection shall not be used to pay costs that  
 15 otherwise would be reimbursable as medical as-  
 16 sistance for a child with a disability under the  
 17 State medicaid program under title XIX of the  
 18 Social Security Act.

19 “(J) DEFINITIONS.—In this paragraph:

20 “(i) AVERAGE PER-PUPIL EXPENDI-  
 21 TURE.—The term ‘average per-pupil ex-  
 22 penditure’ has the meaning given the term  
 23 in section 9101 of the Elementary and  
 24 Secondary Education Act of 1965.

1                   “(ii) HIGH-NEED CHILD.—The term  
2                   ‘high-need’, when used with respect to a  
3                   child with a disability, means a child with  
4                   a disability for whom a free appropriate  
5                   public education in a fiscal year costs more  
6                   than 4 times the average per-pupil expend-  
7                   iture for such fiscal year.

8                   “(K) SPECIAL RULE FOR RISK POOL AND  
9                   HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT  
10                  AS OF JANUARY 1, 2003.—Notwithstanding the  
11                  provisions of subparagraphs (A) through (J), a  
12                  State may use funds reserved pursuant to this  
13                  paragraph for administering and implementing  
14                  a placement neutral cost-sharing and reim-  
15                  bursement program of high-need, low-incidence,  
16                  emergency, catastrophic, or extraordinary aid to  
17                  local educational agencies that provides services  
18                  to students eligible under this part based on eli-  
19                  gibility criteria for such programs that were op-  
20                  erative on January 1, 2003.

21                  “(4) INAPPLICABILITY OF CERTAIN PROHIBI-  
22                  TIONS.—A State may use funds the State reserves  
23                  under paragraphs (1), (2), and (3) without regard  
24                  to—

1           “(A) the prohibition on commingling of  
2 funds in section 612(a)(17)(B); and

3           “(B) the prohibition on supplanting other  
4 funds in section 612(a)(17)(C).

5           “(5) REPORT ON USE OF FUNDS.—As part of  
6 the information required to be submitted to the Sec-  
7 retary under section 612, each State shall annually  
8 describe how amounts under this section—

9           “(A) will be used to meet the requirements  
10 of this Act; and

11           “(B) will be allocated among the activities  
12 described in this section to meet State priorities  
13 based on input from local educational agencies.

14           “(f) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-  
15 CIES.—

16           “(1) SUBGRANTS REQUIRED.—Each State that  
17 receives a grant under this section for any fiscal  
18 year shall distribute any funds the State does not re-  
19 serve under subsection (e) to local educational agen-  
20 cies (including public charter schools that operate as  
21 local educational agencies) in the State that have es-  
22 tablished their eligibility under section 613 for use  
23 in accordance with this part.

24           “(2) PROCEDURE FOR ALLOCATIONS TO LOCAL  
25 EDUCATIONAL AGENCIES.—

1           “(A) PROCEDURE.—For each fiscal year  
2           for which funds are allocated to States under  
3           subsection (d), each State shall allocate funds  
4           under paragraph (1) as follows:

5                 “(i) BASE PAYMENTS.—The State  
6                 shall first award each local educational  
7                 agency described in paragraph (1) the  
8                 amount the local educational agency would  
9                 have received under this section for fiscal  
10                year 1999, if the State had distributed 75  
11                percent of its grant for that year under  
12                section 611(d) as section 611(d) was then  
13                in effect.

14               “(ii) ALLOCATION OF REMAINING  
15               FUNDS.—After making allocations under  
16               clause (i), the State shall—

17                         “(I) allocate 85 percent of any  
18                         remaining funds to those local edu-  
19                         cational agencies on the basis of the  
20                         relative numbers of children enrolled  
21                         in public and private elementary  
22                         schools and secondary schools within  
23                         the local educational agency’s jurisdic-  
24                         tion; and

1                   “(II) allocate 15 percent of those  
2                   remaining funds to those local edu-  
3                   cational agencies in accordance with  
4                   their relative numbers of children liv-  
5                   ing in poverty, as determined by the  
6                   State educational agency.

7                   “(3) REALLOCATION OF FUNDS.—If a State  
8                   educational agency determines that a local edu-  
9                   cational agency is adequately providing a free appro-  
10                  pate public education to all children with disabil-  
11                  ities residing in the area served by that local edu-  
12                  cational agency with State and local funds, the State  
13                  educational agency may reallocate any portion of the  
14                  funds under this part that are not needed by that  
15                  local educational agency to provide a free appro-  
16                  pate public education to other local educational  
17                  agencies in the State that are not adequately pro-  
18                  viding special education and related services to all  
19                  children with disabilities residing in the areas served  
20                  by those other local educational agencies.

21                  “(g) DEFINITIONS.—For the purpose of this sec-  
22                  tion—

23                  “(1) the term ‘average per-pupil expenditure in  
24                  public elementary schools and secondary schools in  
25                  the United States’ means—

1           “(A) without regard to the source of  
2 funds—

3           “(i) the aggregate current expendi-  
4 tures, during the second fiscal year pre-  
5 ceding the fiscal year for which the deter-  
6 mination is made (or, if satisfactory data  
7 for that year are not available, during the  
8 most recent preceding fiscal year for which  
9 satisfactory data are available) of all local  
10 educational agencies in the 50 States and  
11 the District of Columbia; plus

12           “(ii) any direct expenditures by the  
13 State for the operation of those local edu-  
14 cational agencies; divided by

15           “(B) the aggregate number of children in  
16 average daily attendance to whom those local  
17 educational agencies provided free public edu-  
18 cation during that preceding year; and

19           “(2) the term ‘State’ means each of the 50  
20 States, the District of Columbia, and the Common-  
21 wealth of Puerto Rico.

22           “(h) USE OF AMOUNTS BY SECRETARY OF THE IN-  
23 TERIOR.—

24           “(1) PROVISION OF AMOUNTS FOR ASSIST-  
25 ANCE.—



1           “(A) IN GENERAL.—The Secretary of Edu-  
2 cation shall provide amounts to the Secretary of  
3 the Interior to meet the need for assistance for  
4 the education of children with disabilities on  
5 reservations aged 5 through 21 who are en-  
6 rolled in elementary schools and secondary  
7 schools for Indian children operated or funded  
8 by the Secretary of the Interior. The amount of  
9 such payment for any fiscal year shall be equal  
10 to 80 percent of the amount allotted under sub-  
11 section (c) for that fiscal year.

12           “(B) CALCULATION OF NUMBER OF CHIL-  
13 DREN.—In the case of Indian students aged 3  
14 through 5 who are enrolled in programs affili-  
15 ated with the Bureau of Indian Affairs (here-  
16 after in this subsection referred to as ‘BIA’)  
17 schools, and that are required by the States in  
18 which such schools are located to attain or  
19 maintain State accreditation, and which schools  
20 had such accreditation prior to the date of en-  
21 actment of the Individuals with Disabilities  
22 Education Act Amendments of 1991, the school  
23 shall be allowed to count those children for the  
24 purpose of distribution of the funds provided  
25 under this paragraph to the Secretary of the

1 Interior. The Secretary of the Interior shall be  
2 responsible for meeting all of the requirements  
3 of this part for these children, in accordance  
4 with paragraph (2).

5 “(C) ADDITIONAL REQUIREMENT.—With  
6 respect to all other children aged 3 through 21  
7 on reservations, the State educational agency  
8 shall be responsible for ensuring that all of the  
9 requirements of this part are implemented.

10 “(2) SUBMISSION OF INFORMATION.—The Sec-  
11 retary of Education may provide the Secretary of  
12 the Interior amounts under paragraph (1) for a fis-  
13 cal year only if the Secretary of the Interior submits  
14 to the Secretary of Education information that—

15 “(A) demonstrates that the Department of  
16 the Interior meets the appropriate require-  
17 ments, as determined by the Secretary of Edu-  
18 cation, of sections 612 (including monitoring  
19 and evaluation activities) and 613;

20 “(B) includes a description of how the Sec-  
21 retary of the Interior will coordinate the provi-  
22 sion of services under this part with local edu-  
23 cational agencies, tribes and tribal organiza-  
24 tions, and other private and Federal service  
25 providers;

1           “(C) includes an assurance that there are  
2           public hearings, adequate notice of such hear-  
3           ings, and an opportunity for comment afforded  
4           to members of tribes, tribal governing bodies,  
5           and affected local school boards before the  
6           adoption of the policies, programs, and proce-  
7           dures described in subparagraph (A)

8           “(D) includes an assurance that the Sec-  
9           retary of the Interior will provide such informa-  
10          tion as the Secretary of Education may require  
11          to comply with section 618;

12          “(E) includes an assurance that the Sec-  
13          retary of the Interior and the Secretary of  
14          Health and Human Services have entered into  
15          a memorandum of agreement, to be provided to  
16          the Secretary of Education, for the coordination  
17          of services, resources, and personnel between  
18          their respective Federal, State, and local offices  
19          and with State and local educational agencies  
20          and other entities to facilitate the provision of  
21          services to Indian children with disabilities re-  
22          siding on or near reservations (such agreement  
23          shall provide for the apportionment of respon-  
24          sibilities and costs including, but not limited to,  
25          child find, evaluation, diagnosis, remediation or

1 therapeutic measures, and (where appropriate)  
2 equipment and medical or personal supplies as  
3 needed for a child to remain in school or a pro-  
4 gram); and

5 “(F) includes an assurance that the De-  
6 partment of the Interior will cooperate with the  
7 Department of Education in its exercise of  
8 monitoring and oversight of this application,  
9 and any agreements entered into between the  
10 Secretary of the Interior and other entities  
11 under this part, and will fulfill its duties under  
12 this part. Section 616(a) shall apply to the in-  
13 formation described in this paragraph.

14 “(3) PAYMENTS FOR EDUCATION AND SERVICES  
15 FOR INDIAN CHILDREN WITH DISABILITIES AGED 3  
16 THROUGH 5.—

17 “(A) IN GENERAL.—With funds appro-  
18 priated under subsection (i), the Secretary of  
19 Education shall make payments to the Sec-  
20 retary of the Interior to be distributed to tribes  
21 or tribal organizations (as defined under section  
22 4 of the Indian Self-Determination and Edu-  
23 cation Assistance Act) or consortia of the above  
24 to provide for the coordination of assistance for  
25 special education and related services for chil-

1        dren with disabilities aged 3 through 5 on res-  
2        ervations served by elementary schools and sec-  
3        ondary schools for Indian children operated or  
4        funded by the Department of the Interior. The  
5        amount of such payments under subparagraph  
6        (B) for any fiscal year shall be equal to 20 per-  
7        cent of the amount allotted under subsection  
8        (c).

9                “(B) DISTRIBUTION OF FUNDS.—The Sec-  
10        retary of the Interior shall distribute the total  
11        amount of the payment under subparagraph  
12        (A) by allocating to each tribe or tribal organi-  
13        zation an amount based on the number of chil-  
14        dren with disabilities ages 3 through 5 residing  
15        on reservations as reported annually, divided by  
16        the total of those children served by all tribes  
17        or tribal organizations.

18               “(C) SUBMISSION OF INFORMATION.—To  
19        receive a payment under this paragraph, the  
20        tribe or tribal organization shall submit such  
21        figures to the Secretary of the Interior as re-  
22        quired to determine the amounts to be allocated  
23        under subparagraph (B). This information shall  
24        be compiled and submitted to the Secretary of  
25        Education.

1           “(D) USE OF FUNDS.—The funds received  
2           by a tribe or tribal organization shall be used  
3           to assist in child find, screening, and other pro-  
4           cedures for the early identification of children  
5           aged 3 through 5, parent training, and the pro-  
6           vision of direct services. These activities may be  
7           carried out directly or through contracts or co-  
8           operative agreements with the BIA, local edu-  
9           cational agencies, and other public or private  
10          nonprofit organizations. The tribe or tribal or-  
11          ganization is encouraged to involve Indian par-  
12          ents in the development and implementation of  
13          these activities. The above entities shall, as ap-  
14          propriate, make referrals to local, State, or  
15          Federal entities for the provision of services or  
16          further diagnosis.

17          “(E) BIENNIAL REPORT.—To be eligible to  
18          receive a grant pursuant to subparagraph (A),  
19          the tribe or tribal organization shall provide to  
20          the Secretary of the Interior a biennial report  
21          of activities undertaken under this paragraph,  
22          including the number of contracts and coopera-  
23          tive agreements entered into, the number of  
24          children contacted and receiving services for  
25          each year, and the estimated number of chil-

1           dren needing services during the 2 years fol-  
2           lowing the year in which the report is made.  
3           The Secretary of the Interior shall include a  
4           summary of this information on a biennial basis  
5           in the report to the Secretary of Education re-  
6           quired under this subsection. The Secretary of  
7           Education may require any additional informa-  
8           tion from the Secretary of the Interior.

9                   “(F) PROHIBITIONS.—None of the funds  
10           allocated under this paragraph may be used by  
11           the Secretary of the Interior for administrative  
12           purposes, including child count and the provi-  
13           sion of technical assistance.

14                   “(4) PLAN FOR COORDINATION OF SERVICES.—  
15           The Secretary of the Interior shall develop and im-  
16           plement a plan for the coordination of services for  
17           all Indian children with disabilities residing on res-  
18           ervations covered under this Act. Such plan shall  
19           provide for the coordination of services benefiting  
20           these children from whatever source, including  
21           tribes, the Indian Health Service, other BIA divi-  
22           sions, and other Federal agencies. In developing the  
23           plan, the Secretary of the Interior shall consult with  
24           all interested and involved parties. The plan shall be  
25           based on the needs of the children and the system

1 best suited for meeting those needs, and may involve  
2 the establishment of cooperative agreements between  
3 the BIA, other Federal agencies, and other entities.  
4 The plan shall also be distributed upon request to  
5 States, State and local educational agencies, and  
6 other agencies providing services to infants, toddlers,  
7 and children with disabilities, to tribes, and to other  
8 interested parties.

9 “(5) ESTABLISHMENT OF ADVISORY BOARD.—  
10 To meet the requirements of section 612(a)(20), the  
11 Secretary of the Interior shall establish, under the  
12 BIA, an advisory board composed of individuals in-  
13 volved in or concerned with the education and provi-  
14 sion of services to Indian infants, toddlers, children,  
15 and youth with disabilities, including Indians with  
16 disabilities, Indian parents or guardians of such chil-  
17 dren, teachers, service providers, State and local  
18 educational officials, representatives of tribes or trib-  
19 al organizations, representatives from State Inter-  
20 agency Coordinating Councils under section 641 in  
21 States having reservations, and other members rep-  
22 resenting the various divisions and entities of the  
23 BIA. The chairperson shall be selected by the Sec-  
24 retary of the Interior. The advisory board shall—



1           “(A) assist in the coordination of services  
2           within the BIA and with other local, State, and  
3           Federal agencies in the provision of education  
4           for infants, toddlers, and children with disabili-  
5           ties;

6           “(B) advise and assist the Secretary of the  
7           Interior in the performance of the Secretary’s  
8           responsibilities described in this subsection;

9           “(C) develop and recommend policies con-  
10          cerning effective inter- and intra-agency collabo-  
11          ration, including modifications to regulations,  
12          and the elimination of barriers to inter- and  
13          intra-agency programs and activities;

14          “(D) provide assistance and disseminate  
15          information on best practices, effective program  
16          coordination strategies, and recommendations  
17          for improved educational programming for In-  
18          dian infants, toddlers, and children with disabili-  
19          ties; and

20          “(E) provide assistance in the preparation  
21          of information required under paragraph  
22          (2)(D).

23          “(6) ANNUAL REPORTS.—

24          “(A) IN GENERAL.—The advisory board  
25          established under paragraph (5) shall prepare

1           and submit to the Secretary of the Interior and  
 2           to Congress an annual report containing a de-  
 3           scription of the activities of the advisory board  
 4           for the preceding year.

5                   “(B) AVAILABILITY.—The Secretary of the  
 6           Interior shall make available to the Secretary of  
 7           Education the report described in subparagraph  
 8           (A).

9           “(i) AUTHORIZATION OF APPROPRIATIONS.—For the  
 10          purpose of carrying out this part, other than section 619,  
 11          there are authorized to be appropriated such sums as may  
 12          be necessary.

13       **“SEC. 612. STATE ELIGIBILITY.**

14           “(a) IN GENERAL.—A State is eligible for assistance  
 15          under this part for a fiscal year if the State submits a  
 16          plan that provides assurances to the Secretary that the  
 17          State has in effect policies and procedures to ensure that  
 18          the State meets each of the following conditions:

19                   “(1) FREE APPROPRIATE PUBLIC EDU-  
 20          CATION.—

21                           “(A) IN GENERAL.—A free appropriate  
 22          public education is available to all children with  
 23          disabilities residing in the State between the  
 24          ages of 3 and 21, inclusive, including children

1 with disabilities who have been suspended or ex-  
2 pelled from school.

3 “(B) LIMITATION.—The obligation to  
4 make a free appropriate public education avail-  
5 able to all children with disabilities does not  
6 apply with respect to children—

7 “(i) aged 3 through 5 and 18 through  
8 21 in a State to the extent that its applica-  
9 tion to those children would be inconsistent  
10 with State law or practice, or the order of  
11 any court, respecting the provision of pub-  
12 lic education to children in those age  
13 ranges; and

14 “(ii) aged 18 through 21 to the extent  
15 that State law does not require that special  
16 education and related services under this  
17 part be provided to children with disabil-  
18 ities who, in the educational placement  
19 prior to their incarceration in an adult cor-  
20 rectional facility—

21 “(I) were not actually identified  
22 as being a child with a disability  
23 under section 602(3); or

1                   “(II) did not have an individual-  
2                   ized education program under this  
3                   part.

4           “(2) FULL EDUCATIONAL OPPORTUNITY  
5 GOAL.—The State has established a goal of pro-  
6 viding full educational opportunity to all children  
7 with disabilities and a detailed timetable for accom-  
8 plishing that goal.

9           “(3) CHILD FIND.—

10           “(A) IN GENERAL.—All children with dis-  
11 abilities residing in the State, including children  
12 with disabilities attending private schools, re-  
13 gardless of the severity of their disabilities, and  
14 who are in need of special education and related  
15 services, are identified, located, and evaluated  
16 and a practical method is developed and imple-  
17 mented to determine which children with dis-  
18 abilities are currently receiving needed special  
19 education and related services.

20           “(B) CONSTRUCTION.—Nothing in this  
21 Act requires that children be classified by their  
22 disability so long as each child who has a dis-  
23 ability listed in section 602 and who, by reason  
24 of that disability, needs special education and

1           related services is regarded as a child with a  
2           disability under this part.

3           “(4) INDIVIDUALIZED EDUCATION PROGRAM.—

4           An individualized education program, or an individ-  
5           ualized family service plan that meets the require-  
6           ments of section 636(d), is developed, reviewed, and  
7           revised for each child with a disability in accordance  
8           with section 614(d).

9           “(5) LEAST RESTRICTIVE ENVIRONMENT.—

10           “(A) IN GENERAL.—To the maximum ex-  
11           tent appropriate, children with disabilities, in-  
12           cluding children in public or private institutions  
13           or other care facilities, are educated with chil-  
14           dren who are not disabled, and special classes,  
15           separate schooling, or other removal of children  
16           with disabilities from the regular educational  
17           environment occurs only when the nature or se-  
18           verity of the disability of a child is such that  
19           education in regular classes with the use of sup-  
20           plementary aids and services cannot be achieved  
21           satisfactorily.

22           “(B) ADDITIONAL REQUIREMENT.—

23           “(i) IN GENERAL.—A State funding  
24           mechanism shall not result in placements  
25           that violate the requirements of subpara-

graph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child's IEP.

“(ii) ASSURANCE.—If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

“(6) PROCEDURAL SAFEGUARDS.—

“(A) IN GENERAL.—Children with disabilities and their parents are afforded the procedural safeguards required by section 615.

“(B) ADDITIONAL PROCEDURAL SAFEGUARDS.—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be se-

1           lected and administered so as not to be racially  
2           or culturally discriminatory. Such materials or  
3           procedures shall be provided and administered  
4           in the child's native language or mode of com-  
5           munication, unless it clearly is not feasible to  
6           do so, and no single procedure shall be the sole  
7           criterion for determining an appropriate edu-  
8           cational program for a child.

9           “(7) EVALUATION.—Children with disabilities  
10          are evaluated in accordance with subsections (a)  
11          through (c) of section 614.

12          “(8) CONFIDENTIALITY.—Agencies in the State  
13          comply with section 617(c) (relating to the confiden-  
14          tiality of records and information).

15          “(9) TRANSITION FROM PART C TO PRESCHOOL  
16          PROGRAMS.—Children participating in early-inter-  
17          vention programs assisted under part C, and who  
18          will participate in preschool programs assisted under  
19          this part, experience a smooth and effective transi-  
20          tion to those preschool programs in a manner con-  
21          sistent with section 637(a)(8). By the third birthday  
22          of such a child, an individualized education program  
23          or, if consistent with sections 614(d)(2)(B) and  
24          636(d), an individualized family service plan, has  
25          been developed and is being implemented for the

1 child. The local educational agency will participate  
 2 in transition planning conferences arranged by the  
 3 designated lead agency under section 637(a)(8).

4 “(10) CHILDREN IN PRIVATE SCHOOLS.—

5 “(A) CHILDREN ENROLLED IN PRIVATE  
 6 SCHOOLS BY THEIR PARENTS.—

7 “(i) IN GENERAL.—To the extent con-  
 8 sistent with the number and location of  
 9 children with disabilities in the State who  
 10 are enrolled by their parents in private ele-  
 11 mentary schools and secondary schools in  
 12 the school district served by a local edu-  
 13 cational agency, provision is made for the  
 14 participation of those children in the pro-  
 15 gram assisted or carried out under this  
 16 part by providing for such children special  
 17 education and related services in accord-  
 18 ance with the following requirements, un-  
 19 less the Secretary has arranged for serv-  
 20 ices to those children under subsection (f):

21 “(I) Amounts to be expended for  
 22 the provision of those services (includ-  
 23 ing direct services to parentally placed  
 24 children) by the local educational  
 25 agency shall be equal to a propor-



1            tionate amount of Federal funds made  
2            available under this part.

3            “(II) Such services may be pro-  
4            vided to children with disabilities on  
5            the premises of private, including reli-  
6            gious, schools, to the extent consistent  
7            with law.

8            “(III) Each local educational  
9            agency shall maintain in its records  
10           and provide to the State educational  
11           agency the number of children evalu-  
12           ated under this paragraph, the num-  
13           ber of children determined to be a  
14           child with a disability, and the num-  
15           ber of children served under this sub-  
16           section.

17           “(ii) CHILD-FIND REQUIREMENT.—

18           “(I) IN GENERAL.—The require-  
19           ments of paragraph (3) of this sub-  
20           section (relating to child find) shall  
21           apply with respect to children with  
22           disabilities in the State who are en-  
23           rolled in private, including religious,  
24           elementary schools and secondary  
25           schools. Such child find process shall

1 be conducted in a comparable time pe-  
2 riod as for other students attending  
3 public schools in the local educational  
4 agency.

5 “(II) EQUITABLE PARTICIPA-  
6 TION.—The child find process shall be  
7 designed to ensure the equitable par-  
8 ticipation of parentally placed private  
9 school children and an accurate count  
10 of such children.

11 “(III) ACTIVITIES.—In carrying  
12 out this clause, the local educational  
13 agency, or where applicable, the State  
14 educational agency, shall undertake  
15 activities similar to those activities un-  
16 dertaken for its public school children.

17 “(IV) COST.—The cost of car-  
18 rying out this clause, including indi-  
19 vidual evaluations, may not be consid-  
20 ered in determining whether a local  
21 education agency has met its obliga-  
22 tions under clause (i).

23 “(V) COMPLETION PERIOD.—  
24 Such child find process shall be com-  
25 pleted in a time period comparable to

1           that for other students attending pub-  
2           lic schools served by the local edu-  
3           cational agency.

4           “(iii) CONSULTATION.—To ensure  
5           timely and meaningful consultation, a local  
6           educational agency, or where appropriate,  
7           a State educational agency, shall consult,  
8           with representatives of children with dis-  
9           abilities parentally placed in private  
10          schools, during the design and development  
11          of special education and related services  
12          for these children, including consultation  
13          regarding—

14               “(I) the child find process and  
15               how parentally placed private school  
16               children suspected of having a dis-  
17               ability can participate equitably, in-  
18               cluding how parents, teachers, and  
19               private school officials will be in-  
20               formed of the process;

21               “(II) the determination of the  
22               proportionate share of Federal funds  
23               available to serve parentally placed  
24               private school children with disabil-  
25               ities under this paragraph, including

1 the determination of how the propor-  
2 tionate share of those funds were cal-  
3 culated;

4 “(III) the consultation process  
5 among the school district, private  
6 school officials, and parents of paren-  
7 tally placed private school children  
8 with disabilities, including how such  
9 process will operate throughout the  
10 school year to ensure that parentally  
11 placed children with disabilities identi-  
12 fied through the child find process can  
13 meaningfully participate in special  
14 education and related services;

15 “(IV) how, where, and by whom  
16 special education and related services  
17 will be provided for parentally placed  
18 private school children, including a  
19 discussion of alternate service delivery  
20 mechanisms, how such services will be  
21 apportioned if funds are insufficient  
22 to serve all children, and how and  
23 when these decisions will be made;  
24 and

1                   “(V) how, if the local educational  
2                   agency disagrees with the views of the  
3                   private school officials on the provi-  
4                   sion of services through a contract,  
5                   the local educational agency shall pro-  
6                   vide to the private school officials a  
7                   written explanation of the reasons  
8                   why such the local educational agency  
9                   chose not to use a contractor.

10                  “(iv) WRITTEN AFFIRMATION.—When  
11                  timely and meaningful consultation as re-  
12                  quired by this section has occurred, the  
13                  local educational agency shall obtain a  
14                  written affirmation signed by the rep-  
15                  resentatives of participating private  
16                  schools, and if such officials do not provide  
17                  such affirmations within a reasonable pe-  
18                  riod of time, the local educational agency  
19                  shall forward the documentation of the  
20                  consultation process to the State edu-  
21                  cational agency.

22                  “(v) COMPLIANCE.—

23                  “(I) IN GENERAL.—A private  
24                  school official shall have the right to  
25                  complain to the State educational

1 agency that the local educational  
2 agency did not engage in consultation  
3 that was meaningful and timely, or  
4 did not give due consideration to the  
5 views of the private school official.

6 “(II) PROCEDURE.—If the pri-  
7 vate school official wishes to complain,  
8 the official shall provide the basis of  
9 the noncompliance with this section by  
10 the local educational agency to the  
11 State educational agency, and the  
12 local educational agency shall forward  
13 the appropriate documentation to the  
14 State educational agency. If the pri-  
15 vate school official is dissatisfied with  
16 the decision of the State educational  
17 agency, such official may complain to  
18 the Secretary by providing the basis  
19 of the noncompliance with this section  
20 by the local educational agency to the  
21 Secretary, and the State educational  
22 agency shall forward the appropriate  
23 documentation to the Secretary.

24 “(vi) PROVISION OF EQUITABLE SERV-  
25 ICES.—

1                   “(I) DIRECT SERVICES.—To the  
2                   extent practicable, the local edu-  
3                   cational agency shall provide direct  
4                   services to children with disabilities  
5                   parentally placed in private schools.

6                   “(II) DIRECTLY OR THROUGH  
7                   CONTRACTS.—A public agency may  
8                   provide special education and related  
9                   services directly or through contracts  
10                  with public and private agencies, orga-  
11                  nizations, and institutions.

12                  “(III) SECULAR, NEUTRAL, NON-  
13                  IDEOLOGICAL.—Special education and  
14                  related services provided to children  
15                  with disabilities attending private  
16                  schools, including materials and  
17                  equipment, shall be secular, neutral,  
18                  and nonideological.

19                  “(vii) PUBLIC CONTROL OF FUNDS.—  
20                  The control of funds used to provide spe-  
21                  cial education and related services under  
22                  this section, and title to materials, equip-  
23                  ment, and property purchased with those  
24                  funds, shall be in a public agency for the  
25                  uses and purposes provided in this Act,

1 and a public agency shall administer the  
2 funds and property.

3 “(B) CHILDREN PLACED IN, OR REFERRED  
4 TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.—

5 “(i) IN GENERAL.—Children with dis-  
6 abilities in private schools and facilities are  
7 provided special education and related  
8 services, in accordance with an individual-  
9 ized education program, at no cost to their  
10 parents, if such children are placed in, or  
11 referred to, such schools or facilities by the  
12 State or appropriate local educational  
13 agency as the means of carrying out the  
14 requirements of this part or any other ap-  
15 plicable law requiring the provision of spe-  
16 cial education and related services to all  
17 children with disabilities within such State.

18 “(ii) STANDARDS.—In all cases de-  
19 scribed in clause (i), the State educational  
20 agency shall determine whether such  
21 schools and facilities meet standards that  
22 apply to State and local educational agen-  
23 cies and that children so served have all  
24 the rights the children would have if served  
25 by such agencies.



1           “(C) PAYMENT FOR EDUCATION OF CHIL-  
 2           DREN ENROLLED IN PRIVATE SCHOOLS WITH-  
 3           OUT CONSENT OF OR REFERRAL BY THE PUB-  
 4           LIC AGENCY.—

5           “(i) IN GENERAL.—Subject to sub-  
 6           paragraph (A), this part does not require  
 7           a local educational agency to pay for the  
 8           cost of education, including special edu-  
 9           cation and related services, of a child with  
 10          a disability at a private school or facility if  
 11          that agency made a free appropriate public  
 12          education available to the child and the  
 13          parents elected to place the child in such  
 14          private school or facility.

15          “(ii) REIMBURSEMENT FOR PRIVATE  
 16          SCHOOL PLACEMENT.—If the parents of a  
 17          child with a disability, who previously re-  
 18          ceived special education and related serv-  
 19          ices under the authority of a public agency,  
 20          enroll the child in a private elementary  
 21          school or secondary school without the con-  
 22          sent of or referral by the public agency, a  
 23          court or a hearing officer may require the  
 24          agency to reimburse the parents for the  
 25          cost of that enrollment if the court or

1 hearing officer finds that the agency had  
2 not made a free appropriate public edu-  
3 cation available to the child in a timely  
4 manner prior to that enrollment.

5 “(iii) LIMITATION ON REIMBURSE-  
6 MENT.—The cost of reimbursement de-  
7 scribed in clause (ii) may be reduced or de-  
8 nied—

9 “(I) if—

10 “(aa) at the most recent  
11 IEP meeting that the parents at-  
12 tended prior to removal of the  
13 child from the public school, the  
14 parents did not inform the IEP  
15 Team that they were rejecting  
16 the placement proposed by the  
17 public agency to provide a free  
18 appropriate public education to  
19 their child, including stating their  
20 concerns and their intent to en-  
21 roll their child in a private school  
22 at public expense; or

23 “(bb) 10 business days (in-  
24 cluding any holidays that occur  
25 on a business day) prior to the

1 removal of the child from the  
2 public school, the parents did not  
3 give written notice to the public  
4 agency of the information de-  
5 scribed in division (aa);

6 “(II) if, prior to the parents’ re-  
7 moval of the child from the public  
8 school, the public agency informed the  
9 parents, through the notice require-  
10 ments described in section 615(b)(3),  
11 of its intent to evaluate the child (in-  
12 cluding a statement of the purpose of  
13 the evaluation that was appropriate  
14 and reasonable), but the parents did  
15 not make the child available for such  
16 evaluation; or

17 “(III) upon a judicial finding of  
18 unreasonableness with respect to ac-  
19 tions taken by the parents.

20 “(iv) EXCEPTION.—Notwithstanding  
21 the notice requirement in clause (iii)(I),  
22 the cost of reimbursement—

23 “(I) shall not be reduced or de-  
24 nied for failure to provide such notice  
25 if—

1                   “(aa) the school prevented  
2                   the parent from providing such  
3                   notice; or

4                   “(bb) the parents had not  
5                   received notice, pursuant to sec-  
6                   tion 615, of the notice require-  
7                   ment in clause (iii)(I); and

8                   “(II) may, in the discretion of a  
9                   court or a hearing officer, not be re-  
10                  duced or denied for failure to provide  
11                  such notice if—

12                  “(aa) the parent is illiterate  
13                  and cannot write in English; or

14                  “(bb) compliance with clause  
15                  (iii)(I) would likely have resulted  
16                  in physical or serious emotional  
17                  harm to the child.

18                  “(11) STATE EDUCATIONAL AGENCY RESPON-  
19                  SIBLE FOR GENERAL SUPERVISION.—

20                  “(A) IN GENERAL.—The State educational  
21                  agency is responsible for ensuring that—

22                  “(i) the requirements of this part are  
23                  met; and

24                  “(ii) all educational programs for chil-  
25                  dren with disabilities in the State, includ-

1           ing all such programs administered by any  
2           other State or local agency—

3                   “(I) are under the general super-  
4                   vision of individuals in the State who  
5                   are responsible for educational pro-  
6                   grams for children with disabilities;  
7                   and

8                   “(II) meet the educational stand-  
9                   ards of the State educational agency.

10           “(B)   LIMITATION.—Subparagraph   (A)  
11           shall not limit the responsibility of agencies in  
12           the State other than the State educational  
13           agency to provide, or pay for some or all of the  
14           costs of, a free appropriate public education for  
15           any child with a disability in the State.

16           “(C)   EXCEPTION.—Notwithstanding sub-  
17           paragraphs (A) and (B), the Governor (or an-  
18           other individual pursuant to State law), con-  
19           sistent with State law, may assign to any public  
20           agency in the State the responsibility of ensur-  
21           ing that the requirements of this part are met  
22           with respect to children with disabilities who  
23           are convicted as adults under State law and in-  
24           carcerated in adult prisons.

1           “(12) OBLIGATIONS RELATED TO AND METH-  
2           ODS OF ENSURING SERVICES.—

3           “(A) ESTABLISHING RESPONSIBILITY FOR  
4           SERVICES.—The Chief Executive Officer of a  
5           State or designee of the officer shall ensure  
6           that an interagency agreement or other mecha-  
7           nism for interagency coordination is in effect  
8           between each public agency described in sub-  
9           paragraph (B) and the State educational agen-  
10          cy, in order to ensure that all services described  
11          in subparagraph (B)(i) that are needed to en-  
12          sure a free appropriate public education are  
13          provided, including the provision of such serv-  
14          ices during the pendency of any dispute under  
15          clause (iii). Such agreement or mechanism shall  
16          include the following:

17               “(i) AGENCY FINANCIAL RESPONSI-  
18               BILITY.—An identification of, or a method  
19               for defining, the financial responsibility of  
20               each agency for providing services de-  
21               scribed in subparagraph (B)(i) to ensure a  
22               free appropriate public education to chil-  
23               dren with disabilities, provided that the fi-  
24               nancial responsibility of each public agency  
25               described in subparagraph (B), including

1 the State Medicaid agency and other public  
2 insurers of children with disabilities, shall  
3 precede the financial responsibility of the  
4 local educational agency (or the State  
5 agency responsible for developing the  
6 child's IEP).

7 “(ii) CONDITIONS AND TERMS OF RE-  
8 IMBURSEMENT.—The conditions, terms,  
9 and procedures under which a local edu-  
10 cational agency shall be reimbursed by  
11 other agencies.

12 “(iii) INTERAGENCY DISPUTES.—Pro-  
13 cedures for resolving interagency disputes  
14 (including procedures under which local  
15 educational agencies may initiate pro-  
16 ceedings) under the agreement or other  
17 mechanism to secure reimbursement from  
18 other agencies or otherwise implement the  
19 provisions of the agreement or mechanism.

20 “(iv) COORDINATION OF SERVICES  
21 PROCEDURES.—Policies and procedures for  
22 agencies to determine and identify the  
23 interagency coordination responsibilities of  
24 each agency to promote the coordination

1 and timely and appropriate delivery of  
2 services described in subparagraph (B)(i).

3 “(B) OBLIGATION OF PUBLIC AGENCY.—

4 “(i) IN GENERAL.—If any public  
5 agency other than an educational agency is  
6 otherwise obligated under Federal or State  
7 law, or assigned responsibility under State  
8 policy, pursuant to subparagraph (A), or  
9 pursuant to an agreement under para-  
10 graph (C), to provide or pay for any serv-  
11 ices that are also considered special edu-  
12 cation or related services (such as, but not  
13 limited to, services described in section  
14 602(1) relating to assistive technology de-  
15 vices, 602(2) relating to assistive tech-  
16 nology services, 602(24) relating to related  
17 services, 602(31) relating to supplementary  
18 aids and services, and 602(32) relating to  
19 transition services) that are necessary for  
20 ensuring a free appropriate public edu-  
21 cation to children with disabilities within  
22 the State, such public agency shall fulfill  
23 that obligation or responsibility, either di-  
24 rectly or through contract or other ar-  
25 rangement pursuant to subparagraph (A).



1                   “(ii) REIMBURSEMENT FOR SERVICES  
 2                   BY PUBLIC AGENCY.—If a public agency  
 3                   other than an educational agency fails to  
 4                   provide or pay for the special education  
 5                   and related services described in clause (i),  
 6                   the local educational agency (or State  
 7                   agency responsible for developing the  
 8                   child’s IEP) shall provide or pay for such  
 9                   services to the child. Such local educational  
 10                  agency or State agency is authorized to  
 11                  claim reimbursement for the services from  
 12                  the public agency that failed to provide or  
 13                  pay for such services and such public agen-  
 14                  cy shall reimburse the local educational  
 15                  agency or State agency pursuant to the  
 16                  terms of the interagency agreement or  
 17                  other mechanism described in subpara-  
 18                  graph (A)(i) according to the procedures  
 19                  established in such agreement pursuant to  
 20                  subparagraph (A)(ii).

21                  “(C) SPECIAL RULE.—The requirements of  
 22                  subparagraph (A) may be met through—

23                         “(i) State statute or regulation;

24                         “(ii) signed agreements between re-  
 25                         spective agency officials that clearly iden-

1           tify the responsibilities of each agency re-  
 2           lating to the provision of services; or

3           “(iii) other appropriate written meth-  
 4           ods as determined by the Chief Executive  
 5           Officer of the State or designee of the offi-  
 6           cer and approved by the Secretary through  
 7           the review and approval of the State’s plan  
 8           pursuant to this section.

9           “(13) PROCEDURAL REQUIREMENTS RELATING  
 10          TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—

11          The State educational agency will not make a final  
 12          determination that a local educational agency is not  
 13          eligible for assistance under this part without first  
 14          affording that agency reasonable notice and an op-  
 15          portunity for a hearing.

16          “(14) PERSONNEL STANDARDS.—

17                 “(A) IN GENERAL.—The State educational  
 18                 agency has established and maintains standards  
 19                 to ensure that personnel necessary to carry out  
 20                 this part are appropriately and adequately pre-  
 21                 pared and trained, including that those per-  
 22                 sonnel have the content knowledge and skills to  
 23                 serve children with disabilities.

24                 “(B) RELATED SERVICES PERSONNEL AND  
 25                 PARAPROFESSIONALS.—The standards under

1           subparagraph (A) include standards for related  
2           services personnel and paraprofessionals that—

3                   “(i) are consistent with any State-ap-  
4                   proved or State-recognized certification, li-  
5                   censing, registration, or other comparable  
6                   requirements that apply to the professional  
7                   discipline in which those personnel are pro-  
8                   viding special education or related services;  
9                   and

10                   “(ii) allow paraprofessionals and as-  
11                   sistants who are appropriately trained and  
12                   supervised, in accordance with State law,  
13                   regulation, or written policy, in meeting  
14                   the requirements of this part to be used to  
15                   assist in the provision of special education  
16                   and related services under this part to chil-  
17                   dren with disabilities.

18           “(C) STANDARDS FOR SPECIAL EDUCATION  
19           TEACHERS.—The standards described in sub-  
20           paragraph (A) shall ensure that each special  
21           education teacher in the State who teaches in  
22           an elementary, middle, or secondary school is  
23           highly qualified not later than the 2006–2007  
24           school year.

1           “(D) POLICY.—In implementing this sec-  
 2           tion, a State shall adopt a policy that includes  
 3           a requirement that local educational agencies in  
 4           the State take measurable steps to recruit, hire,  
 5           train, and retain highly qualified personnel to  
 6           provide special education and related services  
 7           under this part to children with disabilities.

8           “(15) PERFORMANCE GOALS AND INDICA-  
 9           TORS.—The State—

10           “(A) has established goals for the perform-  
 11           ance of children with disabilities in the State  
 12           that—

13                   “(i) promote the purposes of this Act,  
 14                   as stated in section 601(d);

15                   “(ii) are the same as the State’s defi-  
 16                   nition of adequate yearly progress, includ-  
 17                   ing the State’s objectives for progress by  
 18                   children with disabilities, under section  
 19                   1111(b)(2)(C) of the Elementary and Sec-  
 20                   ondary Education Act of 1965;

21                   “(iii) address drop out rates, as well  
 22                   as such other factors as the State may de-  
 23                   termine; and

1 “(iv) are consistent, to the extent ap-  
 2 propriate, with any other goals and stand-  
 3 ards for children established by the State;

4 “(B) has established performance indica-  
 5 tors the State will use to assess progress toward  
 6 achieving the goals described in subparagraph  
 7 (A), including measurable annual objectives for  
 8 progress by children with disabilities under sec-  
 9 tion 1111(b)(2)(C)(v)(II)(cc) of the Elementary  
 10 and Secondary Education Act of 1965; and

11 “(C) will annually report to the Secretary  
 12 and the public on the progress of the State, and  
 13 of children with disabilities in the State, toward  
 14 meeting the goals established under subpara-  
 15 graph (A).

16 “(16) PARTICIPATION IN ASSESSMENTS.—

17 “(A) IN GENERAL.— All children with dis-  
 18 abilities are included in all general State and  
 19 districtwide assessment programs and account-  
 20 ability systems, including assessments and ac-  
 21 countability systems described under section  
 22 1111 of the Elementary and Secondary Edu-  
 23 cation Act of 1965, with appropriate accom-  
 24 modations, alternate assessments where nec-

1           essary, and as indicated in their respective indi-  
2           vidualized education programs.

3           “(B) ACCOMMODATION GUIDELINES.—The  
4           State (or, in the case of a districtwide assess-  
5           ment, the local educational agency) has devel-  
6           oped guidelines for the provision of appropriate  
7           accommodations.

8           “(C) ALTERNATE ASSESSMENTS.—

9           “(i) IN GENERAL.—The State (or, in  
10          the case of a districtwide assessment, the  
11          local educational agency) has developed  
12          and implemented guidelines for the partici-  
13          pation of children with disabilities in alter-  
14          nate assessments for those children who  
15          cannot participate in regular assessments  
16          under subparagraph (B) as indicated in  
17          their respective individualized education  
18          programs.

19          “(ii) REQUIREMENTS FOR ALTERNATE  
20          ASSESSMENTS.—The guidelines under  
21          clause (i) shall provide for alternate assess-  
22          ments that—

23                  “(I) are aligned with the State’s  
24                  challenging academic content and aca-  
25                  demic achievement standards; or

1                   “(II) measure the achievement of  
2                   students against alternate academic  
3                   achievement standards that are  
4                   aligned with the State’s academic con-  
5                   tent standards.

6                   “(iii) CONDUCT OF ALTERNATIVE AS-  
7                   SESSMENTS.—The State conducts the al-  
8                   ternate assessments described in this sub-  
9                   paragraph.

10                  “(D) REPORTS.—The State educational  
11                  agency (or, in the case of a districtwide assess-  
12                  ment, the local educational agency) makes  
13                  available to the public, and reports to the public  
14                  with the same frequency and in the same detail  
15                  as it reports on the assessment of nondisabled  
16                  children, the following:

17                       “(i) The number of children with dis-  
18                       abilities participating in regular assess-  
19                       ments, and the number of those children  
20                       who were provided accommodations in  
21                       order to participate in those assessments.

22                       “(ii) The number of children with dis-  
23                       abilities participating in alternate assess-  
24                       ments described in subparagraph (C)(ii)(I).

1                   “(iii) The number of children with  
2                   disabilities participating in alternate as-  
3                   sessments described in subparagraph  
4                   (C)(ii)(II).

5                   “(iv) The performance of children  
6                   with disabilities on regular assessments  
7                   and on alternate assessments (if the num-  
8                   ber of children with disabilities partici-  
9                   pating in those assessments is sufficient to  
10                  yield statistically reliable information and  
11                  reporting that information will not reveal  
12                  personally identifiable information about  
13                  an individual student), compared with the  
14                  achievement of all children, including chil-  
15                  dren with disabilities, on those assess-  
16                  ments.

17                  “(E) UNIVERSAL DESIGN.—The State edu-  
18                  cational agency (or, in the case of a districtwide  
19                  assessment, the local educational agency) shall,  
20                  to the extent possible, use universal design prin-  
21                  ciples in developing and administering any as-  
22                  sessments under this paragraph.

23                  “(17) SUPPLEMENTATION OF STATE, LOCAL,  
24                  AND OTHER FEDERAL FUNDS.—



1           “(A) EXPENDITURES.—Funds paid to a  
2           State under this part will be expended in ac-  
3           cordance with all the provisions of this part.

4           “(B) PROHIBITION AGAINST COMMINGLING.—Funds paid to a State under this part  
5           will not be commingled with State funds.

6           “(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SEC-  
7           RETARY.—Except as provided in section 613,  
8           funds paid to a State under this part will be  
9           used to supplement the level of Federal, State,  
10          and local funds (including funds that are not  
11          under the direct control of State or local edu-  
12          cational agencies) expended for special edu-  
13          cation and related services provided to children  
14          with disabilities under this part and in no case  
15          to supplant such Federal, State, and local  
16          funds, except that, where the State provides  
17          clear and convincing evidence that all children  
18          with disabilities have available to them a free  
19          appropriate public education, the Secretary may  
20          waive, in whole or in part, the requirements of  
21          this subparagraph if the Secretary concurs with  
22          the evidence provided by the State.  
23  
24

1           “(18) MAINTENANCE OF STATE FINANCIAL  
2       SUPPORT.—

3           “(A) IN GENERAL.—The State does not re-  
4       duce the amount of State financial support for  
5       special education and related services for chil-  
6       dren with disabilities, or otherwise made avail-  
7       able because of the excess costs of educating  
8       those children, below the amount of that sup-  
9       port for the preceding fiscal year.

10          “(B) REDUCTION OF FUNDS FOR FAILURE  
11       TO MAINTAIN SUPPORT.—The Secretary shall  
12       reduce the allocation of funds under section 611  
13       for any fiscal year following the fiscal year in  
14       which the State fails to comply with the re-  
15       quirement of subparagraph (A) by the same  
16       amount by which the State fails to meet the re-  
17       quirement.

18          “(C) WAIVERS FOR EXCEPTIONAL OR UN-  
19       CONTROLLABLE CIRCUMSTANCES.—The Sec-  
20       retary may waive the requirement of subpara-  
21       graph (A) for a State, for 1 fiscal year at a  
22       time, if the Secretary determines that—

23               “(i) granting a waiver would be equi-  
24               table due to exceptional or uncontrollable  
25               circumstances such as a natural disaster or

1 a precipitous and unforeseen decline in the  
2 financial resources of the State; or

3 “(ii) the State meets the standard in  
4 paragraph (17)(C) for a waiver of the re-  
5 quirement to supplement, and not to sup-  
6 plant, funds received under this part.

7 “(D) SUBSEQUENT YEARS.—If, for any  
8 year, a State fails to meet the requirement of  
9 subparagraph (A), including any year for which  
10 the State is granted a waiver under subpara-  
11 graph (C), the financial support required of the  
12 State in future years under subparagraph (A)  
13 shall be the amount that would have been re-  
14 quired in the absence of that failure and not  
15 the reduced level of the State’s support.

16 “(E) REGULATIONS.—

17 “(i) IN GENERAL.—The Secretary  
18 shall, by regulation, establish procedures  
19 (including objective criteria and consider-  
20 ation of the results of compliance reviews  
21 of the State conducted by the Secretary)  
22 for determining whether to grant a waiver  
23 under subparagraph (C)(ii).

24 “(ii) TIMELINE.—The Secretary shall  
25 publish proposed regulations under clause

1 (i) not later than 6 months after the date  
2 of enactment of the Individuals with Dis-  
3 abilities Education Improvement Act of  
4 2003, and shall issue final regulations  
5 under clause (i) not later than 1 year after  
6 such date of enactment.

7 “(19) PUBLIC PARTICIPATION.—Prior to the  
8 adoption of any policies and procedures needed to  
9 comply with this section (including any amendments  
10 to such policies and procedures), the State ensures  
11 that there are public hearings, adequate notice of  
12 the hearings, and an opportunity for comment avail-  
13 able to the general public, including individuals with  
14 disabilities and parents of children with disabilities.

15 “(20) STATE ADVISORY PANEL.—

16 “(A) IN GENERAL.—The State has estab-  
17 lished and maintains an advisory panel for the  
18 purpose of providing policy guidance with re-  
19 spect to special education and related services  
20 for children with disabilities in the State.

21 “(B) MEMBERSHIP.—Such advisory panel  
22 shall consist of members appointed by the Gov-  
23 ernor, or any other official authorized under  
24 State law to make such appointments, that is  
25 representative of the State population and that

1 is composed of individuals involved in, or con-  
2 cerned with, the education of children with dis-  
3 abilities, including—

4 “(i) parents of children with disabil-  
5 ities ages birth through 26;

6 “(ii) individuals with disabilities;

7 “(iii) teachers;

8 “(iv) representatives of institutions of  
9 higher education that prepare special edu-  
10 cation and related services personnel;

11 “(v) State and local education offi-  
12 cials;

13 “(vi) administrators of programs for  
14 children with disabilities;

15 “(vii) representatives of other State  
16 agencies involved in the financing or deliv-  
17 ery of related services to children with dis-  
18 abilities;

19 “(viii) representatives of private  
20 schools and public charter schools;

21 “(ix) at least 1 representative of a vo-  
22 cational, community, or business organiza-  
23 tion concerned with the provision of transi-  
24 tion services to children with disabilities;  
25 and

1                   “(x) representatives from the State  
2                   juvenile and adult corrections agencies.

3                   “(C) SPECIAL RULE.—A majority of the  
4                   members of the panel shall be individuals with  
5                   disabilities ages birth through 26 or parents of  
6                   such individuals.

7                   “(D) DUTIES.—The advisory panel shall—

8                   “(i) advise the State educational agen-  
9                   cy of unmet needs within the State in the  
10                  education of children with disabilities;

11                  “(ii) comment publicly on any rules or  
12                  regulations proposed by the State regard-  
13                  ing the education of children with disabil-  
14                  ities;

15                  “(iii) advise the State educational  
16                  agency in developing evaluations and re-  
17                  porting on data to the Secretary under sec-  
18                  tion 618;

19                  “(iv) advise the State educational  
20                  agency in developing corrective action  
21                  plans to address findings identified in Fed-  
22                  eral monitoring reports under this part;  
23                  and

24                  “(v) advise the State educational  
25                  agency in developing and implementing

1 policies relating to the coordination of serv-  
2 ices for children with disabilities.

3 “(21) SUSPENSION AND EXPULSION RATES.—

4 “(A) IN GENERAL.—The State educational  
5 agency examines data to determine if signifi-  
6 cant discrepancies are occurring in the rate of  
7 long-term suspensions and expulsions of chil-  
8 dren with disabilities—

9 “(i) among local educational agencies  
10 in the State; or

11 “(ii) compared to such rates for non-  
12 disabled children within such agencies.

13 “(B) REVIEW AND REVISION OF POLI-  
14 CIES.—If such discrepancies are occurring, the  
15 State educational agency reviews and, if appro-  
16 priate, revises (or requires the affected State or  
17 local educational agency to revise) its policies,  
18 procedures, and practices relating to the devel-  
19 opment and implementation of IEPs, the use of  
20 behavioral interventions, and procedural safe-  
21 guards, to ensure that such policies, procedures,  
22 and practices comply with this Act.

23 “(22) INSTRUCTIONAL MATERIALS.—

24 “(A) IN GENERAL.—The State adopts the  
25 national instructional materials accessibility

1 standard for the purposes of providing instruc-  
2 tional materials to blind persons or other per-  
3 sons with print disabilities in a timely manner  
4 after the publication of the standard by the  
5 Secretary in the Federal Register.

6 “(B) PURCHASE REQUIREMENT.—Not  
7 later than 2 years after the date of the enact-  
8 ment of the Individuals with Disabilities Edu-  
9 cation Improvement Act of 2003, the State edu-  
10 cational agency, when purchasing instructional  
11 materials for use in public elementary and sec-  
12 ondary schools within the State, requires the  
13 publisher of the instructional materials, as a  
14 part of any purchase agreement that is made,  
15 renewed, or revised, to prepare and supply elec-  
16 tronic files containing the contents of the in-  
17 structional materials using the national instruc-  
18 tional materials accessibility standard.

19 “(C) DEFINITION.—For purposes of this  
20 paragraph, the term ‘instructional materials’  
21 means printed textbooks and related core mate-  
22 rials that are written and published primarily  
23 for use in elementary school and secondary  
24 school instruction and are required by a State



1 educational agency or local educational agency  
 2 for use by pupils in the classroom.

3 “(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF  
 4 FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT  
 5 SERVICES.—If the State educational agency provides free  
 6 appropriate public education to children with disabilities,  
 7 or provides direct services to such children, such agency—

8 “(1) shall comply with any additional require-  
 9 ments of section 613(a), as if such agency were a  
 10 local educational agency; and

11 “(2) may use amounts that are otherwise avail-  
 12 able to such agency under this part to serve those  
 13 children without regard to section 613(a)(2)(A)(i)  
 14 (relating to excess costs).

15 “(c) EXCEPTION FOR PRIOR STATE PLANS.—

16 “(1) IN GENERAL.—If a State has on file with  
 17 the Secretary policies and procedures that dem-  
 18 onstrate that such State meets any requirement of  
 19 subsection (a), including any policies and procedures  
 20 filed under this part as in effect before the effective  
 21 date of the Individuals with Disabilities Education  
 22 Improvement Act of 2003, the Secretary shall con-  
 23 sider such State to have met such requirement for  
 24 purposes of receiving a grant under this part.

1           “(2) MODIFICATIONS MADE BY STATE.—Sub-  
2       ject to paragraph (3), an application submitted by a  
3       State in accordance with this section shall remain in  
4       effect until the State submits to the Secretary such  
5       modifications as the State determines necessary.  
6       This section shall apply to a modification to an ap-  
7       plication to the same extent and in the same manner  
8       as this section applies to the original plan.

9           “(3) MODIFICATIONS REQUIRED BY THE SEC-  
10      RETARY.—If, after the effective date of the Individ-  
11      uals with Disabilities Education Improvement Act of  
12      2003, the provisions of this Act are amended (or the  
13      regulations developed to carry out this Act are  
14      amended), there is a new interpretation of this Act  
15      by a Federal court or a State’s highest court, or  
16      there is an official finding of noncompliance with  
17      Federal law or regulations, then the Secretary may  
18      require a State to modify its application only to the  
19      extent necessary to ensure the State’s compliance  
20      with this part.

21      “(d) APPROVAL BY THE SECRETARY.—

22           “(1) IN GENERAL.—If the Secretary determines  
23      that a State is eligible to receive a grant under this  
24      part, the Secretary shall notify the State of that de-  
25      termination.

1           “(2) NOTICE AND HEARING.—The Secretary  
2           shall not make a final determination that a State is  
3           not eligible to receive a grant under this part until  
4           after providing the State—

5                       “(A) with reasonable notice; and

6                       “(B) with an opportunity for a hearing.

7           “(e) ASSISTANCE UNDER OTHER FEDERAL PRO-  
8           GRAMS.—Nothing in this title permits a State to reduce  
9           medical and other assistance available, or to alter eligi-  
10          bility, under titles V and XIX of the Social Security Act  
11          with respect to the provision of a free appropriate public  
12          education for children with disabilities in the State.

13          “(f) BY-PASS FOR CHILDREN IN PRIVATE  
14          SCHOOLS.—

15               “(1) IN GENERAL.—If, on the date of enact-  
16          ment of the Education of the Handicapped Act  
17          Amendments of 1983, a State educational agency  
18          was prohibited by law from providing for the equi-  
19          table participation in special programs of children  
20          with disabilities enrolled in private elementary  
21          schools and secondary schools as required by sub-  
22          section (a)(10)(A), or if the Secretary determines  
23          that a State educational agency, local educational  
24          agency, or other entity has substantially failed or is  
25          unwilling to provide for such equitable participation,

1 then the Secretary shall, notwithstanding such provi-  
 2 sion of law, arrange for the provision of services to  
 3 such children through arrangements which shall be  
 4 subject to the requirements of such subsection.

5 “(2) PAYMENTS.—

6 “(A) DETERMINATION OF AMOUNTS.—If  
 7 the Secretary arranges for services pursuant to  
 8 this subsection, the Secretary, after consulta-  
 9 tion with the appropriate public and private  
 10 school officials, shall pay to the provider of such  
 11 services for a fiscal year an amount per child  
 12 that does not exceed the amount determined by  
 13 dividing—

14 “(i) the total amount received by the  
 15 State under this part for such fiscal year;  
 16 by

17 “(ii) the number of children with dis-  
 18 abilities served in the prior year, as re-  
 19 ported to the Secretary by the State under  
 20 section 618.

21 “(B) WITHHOLDING OF CERTAIN  
 22 AMOUNTS.—Pending final resolution of any in-  
 23 vestigation or complaint that may result in a  
 24 determination under this subsection, the Sec-  
 25 retary may withhold from the allocation of the

1 affected State educational agency the amount  
2 the Secretary estimates will be necessary to pay  
3 the cost of services described in subparagraph  
4 (A).

5 “(C) PERIOD OF PAYMENTS.—The period  
6 under which payments are made under sub-  
7 paragraph (A) shall continue until the Sec-  
8 retary determines that there will no longer be  
9 any failure or inability on the part of the State  
10 educational agency to meet the requirements of  
11 subsection (a)(10)(A).

12 “(3) NOTICE AND HEARING.—

13 “(A) IN GENERAL.—The Secretary shall  
14 not take any final action under this subsection  
15 until the State educational agency affected by  
16 such action has had an opportunity, for at least  
17 45 days after receiving written notice thereof,  
18 to submit written objections and to appear be-  
19 fore the Secretary or the Secretary’s designee  
20 to show cause why such action should not be  
21 taken.

22 “(B) REVIEW OF ACTION.—If a State edu-  
23 cational agency is dissatisfied with the Sec-  
24 retary’s final action after a proceeding under  
25 subparagraph (A), such agency may, not later

1           than 60 days after notice of such action, file  
2           with the United States court of appeals for the  
3           circuit in which such State is located a petition  
4           for review of that action. A copy of the petition  
5           shall be forthwith transmitted by the clerk of  
6           the court to the Secretary. The Secretary there-  
7           upon shall file in the court the record of the  
8           proceedings on which the Secretary based the  
9           Secretary's action, as provided in section 2112  
10          of title 28, United States Code.

11                 “(C) REVIEW OF FINDINGS OF FACT.—The  
12           findings of fact by the Secretary, if supported  
13           by substantial evidence, shall be conclusive, but  
14           the court, for good cause shown, may remand  
15           the case to the Secretary to take further evi-  
16           dence, and the Secretary may thereupon make  
17           new or modified findings of fact and may mod-  
18           ify the Secretary's previous action, and shall file  
19           in the court the record of the further pro-  
20           ceedings. Such new or modified findings of fact  
21           shall likewise be conclusive if supported by sub-  
22           stantial evidence.

23                 “(D) JURISDICTION OF COURT OF AP-  
24           PEALS; REVIEW BY UNITED STATES SUPREME  
25           COURT.—Upon the filing of a petition under

1           subparagraph (B), the United States court of  
 2           appeals shall have jurisdiction to affirm the ac-  
 3           tion of the Secretary or to set it aside, in whole  
 4           or in part. The judgment of the court shall be  
 5           subject to review by the Supreme Court of the  
 6           United States upon certiorari or certification as  
 7           provided in section 1254 of title 28, United  
 8           States Code.

9   **“SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.**

10       “(a) IN GENERAL.—A local educational agency is eli-  
 11       gible for assistance under this part for a fiscal year if such  
 12       agency submits a plan that provides assurances to the  
 13       State educational agency that the local educational agency  
 14       meets each of the following conditions:

15           “(1) CONSISTENCY WITH STATE POLICIES.—  
 16       The local educational agency, in providing for the  
 17       education of children with disabilities within its ju-  
 18       risdiction, has in effect policies, procedures, and pro-  
 19       grams that are consistent with the State policies and  
 20       procedures established under section 612.

21           “(2) USE OF AMOUNTS.—

22               “(A) IN GENERAL.—Amounts provided to  
 23       the local educational agency under this part  
 24       shall be expended in accordance with the appli-  
 25       cable provisions of this part and—

1 “(i) shall be used only to pay the ex-  
2 cess costs of providing special education  
3 and related services to children with dis-  
4 abilities;

5 “(ii) shall be used to supplement  
6 State, local, and other Federal funds and  
7 not to supplant such funds; and

8 “(iii) shall not be used, except as pro-  
9 vided in subparagraphs (B) and (C), to re-  
10 duce the level of expenditures for the edu-  
11 cation of children with disabilities made by  
12 the local educational agency from local  
13 funds below the level of those expenditures  
14 for the preceding fiscal year.

15 “(B) EXCEPTION.—Notwithstanding the  
16 restriction in subparagraph (A)(iii), a local edu-  
17 cational agency may reduce the level of expendi-  
18 tures where such reduction is attributable to—

19 “(i) the voluntary departure, by re-  
20 tirement or otherwise, or departure for just  
21 cause, of special education personnel;

22 “(ii) a decrease in the enrollment of  
23 children with disabilities;

24 “(iii) the termination of the obligation  
25 of the agency, consistent with this part, to



1 provide a program of special education to  
 2 a particular child with a disability that is  
 3 an exceptionally costly program, as deter-  
 4 mined by the State educational agency, be-  
 5 cause the child—

6 “(I) has left the jurisdiction of  
 7 the agency;

8 “(II) has reached the age at  
 9 which the obligation of the agency to  
 10 provide a free appropriate public edu-  
 11 cation to the child has terminated; or

12 “(III) no longer needs such pro-  
 13 gram of special education; or

14 “(iv) the termination of costly expend-  
 15 itures for long-term purchases, such as the  
 16 acquisition of equipment or the construc-  
 17 tion of school facilities.

18 “(C) TREATMENT OF FEDERAL FUNDS IN  
 19 CERTAIN FISCAL YEARS.—

20 “(i) 8 PERCENT RULE.—Notwith-  
 21 standing clauses (ii) and (iii) of subpara-  
 22 graph (A), a local educational agency may  
 23 treat as local funds, for the purposes of  
 24 such clauses, not more than 8 percent of

1 the amount of funds the local educational  
2 agency receives under this part.

3 “(ii) 40 PERCENT RULE.—Notwith-  
4 standing clauses (ii) and (iii) of subpara-  
5 graph (A), for any fiscal year for which  
6 States are allocated the maximum amount  
7 of grants pursuant to section 611(a)(2), a  
8 local educational agency may treat as local  
9 funds, for the purposes of such clauses, not  
10 more than 40 percent of the amount of  
11 funds the local educational agency receives  
12 under this part, subject to clause (iv).

13 “(iii) EARLY INTERVENING  
14 PREREFERRAL SERVICES.—

15 “(I) 8 PERCENT RULE.—If a  
16 local educational agency exercises au-  
17 thority pursuant to clause (i), the 8  
18 percent funds shall be counted toward  
19 the percentage and amount of funds  
20 that may be used to provide early in-  
21 tervening prereferral services pursu-  
22 ant to subsection (f).

23 “(II) 40 PERCENT RULE.—If a  
24 local educational agency exercises au-  
25 thority pursuant to clause (ii), the

1 local educational agency shall use an  
2 amount of the 40 percent funds from  
3 clause (ii) that represents 15 percent  
4 of the total amount of funds the local  
5 educational agency receives under this  
6 part, to provide early intervening  
7 prereferral services pursuant to sub-  
8 section (f).

9 “(iv) SPECIAL RULE.—Funds treated  
10 as local funds pursuant to clause (i) or (ii)  
11 may be considered non-Federal or local  
12 funds for the purposes of—

13 “(I) clauses (ii) and (iii) of sub-  
14 paragraph (A); and

15 “(II) the provision of the local  
16 share of costs for title XIX of the So-  
17 cial Security Act.

18 “(v) PROHIBITION.—If a State edu-  
19 cational agency determines that a local  
20 educational agency is unable to establish  
21 and maintain programs of free appropriate  
22 public education that meet the require-  
23 ments of this subsection, then the State  
24 educational agency shall prohibit the local  
25 educational agency from treating funds re-

1           ceived under this part as local funds under  
 2           clause (i) or (ii) for that fiscal year, but  
 3           only if the State educational agency is au-  
 4           thorized to do so by the State constitution  
 5           or a State statute.

6           “(vi) REPORT.—For each fiscal year  
 7           in which a local educational agency exer-  
 8           cises its authority pursuant to this para-  
 9           graph and treats Federal funds as local  
 10          funds, the local educational agency shall  
 11          report to the State educational agency the  
 12          amount of funds so treated and the activi-  
 13          ties that were funded with such funds.

14          “(D) SCHOOLWIDE PROGRAMS UNDER  
 15          TITLE I OF THE ESEA.—Notwithstanding sub-  
 16          paragraph (A) or any other provision of this  
 17          part, a local educational agency may use funds  
 18          received under this part for any fiscal year to  
 19          carry out a schoolwide program under section  
 20          1114 of the Elementary and Secondary Edu-  
 21          cation Act of 1965, except that the amount so  
 22          used in any such program shall not exceed—

23               “(i) the number of children with dis-  
 24               abilities participating in the schoolwide  
 25               program; multiplied by

1                   “(ii)(I) the amount received by the  
2                   local educational agency under this part  
3                   for that fiscal year; divided by

4                   “(II) the number of children with dis-  
5                   abilities in the jurisdiction of that agency.

6                   “(3) PERSONNEL DEVELOPMENT.—The local  
7                   educational agency shall ensure that all personnel  
8                   necessary to carry out this part are appropriately  
9                   and adequately prepared, consistent with the re-  
10                  quirements of section 612(a)(14) of this Act and  
11                  section 2122 of the Elementary and Secondary Edu-  
12                  cation Act of 1965.

13                  “(4) PERMISSIVE USE OF FUNDS.—

14                  “(A) USES.—Notwithstanding paragraph  
15                  (2)(A) or section 612(a)(17)(B) (relating to  
16                  commingled funds), funds provided to the local  
17                  educational agency under this part may be used  
18                  for the following activities:

19                  “(i) SERVICES AND AIDS THAT ALSO  
20                  BENEFIT NONDISABLED CHILDREN.—For  
21                  the costs of special education and related  
22                  services, and supplementary aids and serv-  
23                  ices, provided in a regular class or other  
24                  education-related setting to a child with a  
25                  disability in accordance with the individual-

1            ized education program of the child, even  
 2            if 1 or more nondisabled children benefit  
 3            from such services.

4            “(ii) EARLY INTERVENING SERV-  
 5            ICES.—To develop and implement com-  
 6            prehensive, coordinated, early intervening  
 7            educational services in accordance with  
 8            subsection (f).

9            “(B) CASE MANAGEMENT AND ADMINIS-  
 10            TRATION.—A local educational agency may use  
 11            funds received under this part to purchase ap-  
 12            propriate technology, for recordkeeping, data  
 13            collection, and related case management activi-  
 14            ties of teachers and related services personnel  
 15            providing services described in the individual-  
 16            ized education program of children with disabil-  
 17            ities, that is necessary to the implementation of  
 18            such case management activities.

19            “(5) TREATMENT OF CHARTER SCHOOLS AND  
 20            THEIR STUDENTS.—In carrying out this part with  
 21            respect to charter schools that are public schools of  
 22            the local educational agency, the local educational  
 23            agency—

24            “(A) serves children with disabilities at-  
 25            tending those charter schools in the same man-

ner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and

“(B) provides funds under this part to those charter schools on the same basis, including proportional distribution based on relative enrollment of children with disabilities, and at the same time, as the local educational agency distributes State, local, or a combination of State and local, funds to those charter schools under the State’s charter school law.

“(6) PURCHASE OF INSTRUCTIONAL MATERIALS.—Not later than 2 years after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2003, the local educational agency, when purchasing instructional materials for use in public elementary schools or secondary schools served by the local educational agency, requires the publisher of the instructional materials, as a part of any purchase agreement that is

1 made, renewed, or revised, to prepare and supply  
2 electronic files containing the contents of the in-  
3 structional materials using the national instructional  
4 materials accessibility standard described in section  
5 612(a)(22).

6 “(7) INFORMATION FOR STATE EDUCATIONAL  
7 AGENCY.—The local educational agency shall provide  
8 the State educational agency with information nec-  
9 essary to enable the State educational agency to  
10 carry out its duties under this part, including, with  
11 respect to paragraphs (15) and (16) of section  
12 612(a), information relating to the performance of  
13 children with disabilities participating in programs  
14 carried out under this part.

15 “(8) PUBLIC INFORMATION.—The local edu-  
16 cational agency shall make available to parents of  
17 children with disabilities and to the general public  
18 all documents relating to the eligibility of such agen-  
19 cy under this part.

20 “(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

21 “(1) IN GENERAL.—If a local educational agen-  
22 cy or State agency has on file with the State edu-  
23 cational agency policies and procedures that dem-  
24 onstrate that such local educational agency, or such  
25 State agency, as the case may be, meets any require-



1       ment of subsection (a), including any policies and  
2       procedures filed under this part as in effect before  
3       the effective date of the Individuals with Disabilities  
4       Education Improvement Act of 2003, the State edu-  
5       cational agency shall consider such local educational  
6       agency or State agency, as the case may be, to have  
7       met such requirement for purposes of receiving as-  
8       sistance under this part.

9               “(2) MODIFICATION MADE BY LOCAL EDU-  
10       CATIONAL AGENCY.—Subject to paragraph (3), an  
11       application submitted by a local educational agency  
12       in accordance with this section shall remain in effect  
13       until the local educational agency submits to the  
14       State educational agency such modifications as the  
15       local educational agency determines necessary.

16              “(3) MODIFICATIONS REQUIRED BY STATE  
17       EDUCATIONAL AGENCY.—If, after the effective date  
18       of the Individuals with Disabilities Education Im-  
19       provement Act of 2003, the provisions of this Act  
20       are amended (or the regulations developed to carry  
21       out this Act are amended), there is a new interpreta-  
22       tion of this Act by Federal or State courts, or there  
23       is an official finding of noncompliance with Federal  
24       or State law or regulations, then the State edu-  
25       cational agency may require a local educational

1 agency to modify its application only to the extent  
2 necessary to ensure the local educational agency's  
3 compliance with this part or State law.

4 “(c) NOTIFICATION OF LOCAL EDUCATIONAL AGEN-  
5 CY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the  
6 State educational agency determines that a local edu-  
7 cational agency or State agency is not eligible under this  
8 section, then the State educational agency shall notify the  
9 local educational agency or State agency, as the case may  
10 be, of that determination and shall provide such local edu-  
11 cational agency or State agency with reasonable notice and  
12 an opportunity for a hearing.

13 “(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

14 “(1) IN GENERAL.—If the State educational  
15 agency, after reasonable notice and an opportunity  
16 for a hearing, finds that a local educational agency  
17 or State agency that has been determined to be eligi-  
18 ble under this section is failing to comply with any  
19 requirement described in subsection (a), the State  
20 educational agency shall reduce or shall not provide  
21 any further payments to the local educational agency  
22 or State agency until the State educational agency  
23 is satisfied that the local educational agency or State  
24 agency, as the case may be, is complying with that  
25 requirement.

1           “(2) ADDITIONAL REQUIREMENT.—Any State  
2           agency or local educational agency in receipt of a no-  
3           tice described in paragraph (1) shall, by means of  
4           public notice, take such measures as may be nec-  
5           essary to bring the pendency of an action pursuant  
6           to this subsection to the attention of the public with-  
7           in the jurisdiction of such agency.

8           “(3) CONSIDERATION.—In carrying out its re-  
9           sponsibilities under paragraph (1), the State edu-  
10          cational agency shall consider any decision made in  
11          a hearing held under section 615 that is adverse to  
12          the local educational agency or State agency involved  
13          in that decision.

14          “(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

15               “(1) JOINT ESTABLISHMENT.—

16                   “(A) IN GENERAL.—A State educational  
17                   agency may require a local educational agency  
18                   to establish its eligibility jointly with another  
19                   local educational agency if the State educational  
20                   agency determines that the local educational  
21                   agency will be ineligible under this section be-  
22                   cause the local educational agency will not be  
23                   able to establish and maintain programs of suf-  
24                   ficient size and scope to effectively meet the  
25                   needs of children with disabilities.

1           “(B) CHARTER SCHOOL EXCEPTION.—A  
2           State educational agency may not require a  
3           charter school that is a local educational agency  
4           to jointly establish its eligibility under subpara-  
5           graph (A) unless the charter school is explicitly  
6           permitted to do so under the State’s charter  
7           school law.

8           “(2) AMOUNT OF PAYMENTS.—If a State edu-  
9           cational agency requires the joint establishment of  
10          eligibility under paragraph (1), the total amount of  
11          funds made available to the affected local edu-  
12          cational agencies shall be equal to the sum of the  
13          payments that each such local educational agency  
14          would have received under section 611(f) if such  
15          agencies were eligible for such payments.

16          “(3) REQUIREMENTS.—Local educational agen-  
17          cies that establish joint eligibility under this sub-  
18          section shall—

19                 “(A) adopt policies and procedures that  
20                 are consistent with the State’s policies and pro-  
21                 cedures under section 612(a); and

22                 “(B) be jointly responsible for imple-  
23                 menting programs that receive assistance under  
24                 this part.

1           “(4) REQUIREMENTS FOR EDUCATIONAL SERV-  
2       ICE AGENCIES.—

3           “(A) IN GENERAL.—If an educational serv-  
4       ice agency is required by State law to carry out  
5       programs under this part, the joint responsibil-  
6       ities given to local educational agencies under  
7       this subsection shall—

8                   “(i) not apply to the administration  
9                   and disbursement of any payments re-  
10                  ceived by that educational service agency;  
11                  and

12                   “(ii) be carried out only by that edu-  
13                  cational service agency.

14           “(B) ADDITIONAL REQUIREMENT.—Not-  
15       withstanding any other provision of this sub-  
16       section, an educational service agency shall pro-  
17       vide for the education of children with disabil-  
18       ities in the least restrictive environment, as re-  
19       quired by section 612(a)(5).

20       “(f) EARLY INTERVENING SERVICES.—

21           “(1) IN GENERAL.—A local educational agency  
22       may not use more than 15 percent of the amount  
23       such agency receives under this part for any fiscal  
24       year, less any amount treated as local funds pursu-  
25       ant to subsection (a)(2)(C), if any, in combination

1 with other amounts (which may include amounts  
2 other than education funds), to develop and imple-  
3 ment comprehensive, coordinated, early intervening  
4 educational services, which may include interagency  
5 financing structures, for students in kindergarten  
6 through grade 12 (with a particular emphasis on  
7 students in kindergarten through grade 3) who have  
8 not been identified as needing special education or  
9 related services but who require additional academic  
10 and behavioral support to succeed in a general edu-  
11 cation environment.

12 “(2) ACTIVITIES.—In implementing comprehen-  
13 sive, coordinated, early intervening educational serv-  
14 ices under this subsection, a local educational agency  
15 may carry out activities that include—

16 “(A) professional development (which may  
17 be provided by entities other than local edu-  
18 cational agencies) for teachers and other school  
19 staff to enable such personnel to deliver sci-  
20 entifically based academic and behavioral inter-  
21 ventions, including scientifically based literacy  
22 instruction, and, where appropriate, instruction  
23 on the use of adaptive and instructional soft-  
24 ware;

1           “(B) providing educational and behavioral  
2           evaluations, services, and supports, including  
3           scientifically based literacy instruction; and

4           “(C) developing and implementing inter-  
5           agency financing structures for the provision of  
6           such services and supports.

7           “(3) CONSTRUCTION.—Nothing in this sub-  
8           section shall be construed to either limit or create a  
9           right to a free appropriate public education under  
10          this part.

11          “(4) REPORTING.—Each local educational  
12          agency that develops and maintains comprehensive,  
13          coordinated, early intervening educational services  
14          with funds made available for this subsection, shall  
15          annually report to the State educational agency on—

16               “(A) the number of children served under  
17               this subsection; and

18               “(B) the number of children served under  
19               this subsection who are subsequently referred to  
20               special education.

21          “(5) COORDINATION WITH CERTAIN PROJECTS  
22          UNDER ELEMENTARY AND SECONDARY EDUCATION  
23          ACT OF 1965.—Funds made available to carry out  
24          this subsection may be used to carry out comprehen-  
25          sive, coordinated, early intervening educational serv-

1       ices aligned with activities funded by, and carried  
 2       out under, the Elementary and Secondary Education  
 3       Act of 1965 if such funds are used to supplement,  
 4       and not supplant, funds made available under the  
 5       Elementary and Secondary Education Act of 1965  
 6       for the activities and services assisted under this  
 7       subsection.

8       “(g) DIRECT SERVICES BY THE STATE EDU-  
 9       CATIONAL AGENCY.—

10           “(1) IN GENERAL.—A State educational agency  
 11       shall use the payments that would otherwise have  
 12       been available to a local educational agency or to a  
 13       State agency to provide special education and re-  
 14       lated services directly to children with disabilities re-  
 15       siding in the area served by that local educational  
 16       agency, or for whom that State agency is respon-  
 17       sible, if the State educational agency determines  
 18       that the local educational agency or State agency, as  
 19       the case may be—

20           “(A) has not provided the information  
 21       needed to establish the eligibility of such agency  
 22       under this section;

23           “(B) is unable to establish and maintain  
 24       programs of free appropriate public education  
 25       that meet the requirements of subsection (a);



1           “(C) is unable or unwilling to be consoli-  
 2           dated with 1 or more local educational agencies  
 3           in order to establish and maintain such pro-  
 4           grams; or

5           “(D) has 1 or more children with disabil-  
 6           ities who can best be served by a regional or  
 7           State program or service delivery system de-  
 8           signed to meet the needs of such children.

9           “(2) MANNER AND LOCATION OF EDUCATION  
 10          AND SERVICES.—The State educational agency may  
 11          provide special education and related services under  
 12          paragraph (1) in such manner and at such locations  
 13          (including regional or State centers) as the State  
 14          agency considers appropriate. Such education and  
 15          services shall be provided in accordance with this  
 16          part.

17          “(h) STATE AGENCY ELIGIBILITY.—Any State agen-  
 18          cy that desires to receive a subgrant for any fiscal year  
 19          under section 611(f) shall demonstrate to the satisfaction  
 20          of the State educational agency that—

21               “(1) all children with disabilities who are par-  
 22               ticipating in programs and projects funded under  
 23               this part receive a free appropriate public education,  
 24               and that those children and their parents are pro-

1 vided all the rights and procedural safeguards de-  
2 scribed in this part; and

3 “(2) the agency meets such other conditions of  
4 this section as the Secretary determines to be appro-  
5 priate.

6 “(i) DISCIPLINARY INFORMATION.—The State may  
7 require that a local educational agency include in the  
8 records of a child with a disability a statement of any cur-  
9 rent or previous disciplinary action that has been taken  
10 against the child and transmit such statement to the same  
11 extent that such disciplinary information is included in,  
12 and transmitted with, the student records of nondisabled  
13 children. The statement may include a description of any  
14 behavior engaged in by the child that required disciplinary  
15 action, a description of the disciplinary action taken, and  
16 any other information that is relevant to the safety of the  
17 child and other individuals involved with the child. If the  
18 State adopts such a policy, and the child transfers from  
19 1 school to another, the transmission of any of the child’s  
20 records shall include both the child’s current individual-  
21 ized education program and any such statement of current  
22 or previous disciplinary action that has been taken against  
23 the child.

24 “(j) STATE AGENCY FLEXIBILITY.—

1           “(1) TREATMENT OF FEDERAL FUNDS IN CER-  
2           TAIN FISCAL YEARS.—If a State educational agency  
3           pays or reimburses local educational agencies within  
4           the State for not less than 80 percent of the non-  
5           Federal share of the costs of special education and  
6           related services, or the State is the sole provider of  
7           free appropriate public education or direct services  
8           pursuant to section 612(b), then the State edu-  
9           cational agency, notwithstanding sections 612(a)  
10          (17) and (18) and 612(b), may treat funds allocated  
11          pursuant to section 611 as general funds available  
12          to support the educational purposes described in  
13          paragraph (2) (A) and (B).

14          “(2) CONDITIONS.—A State educational agency  
15          may use funds in accordance with paragraph (1)  
16          subject to the following conditions:

17                 “(A) 8 PERCENT RULE.—A State edu-  
18                 cational agency may treat not more than 8 per-  
19                 cent of the funds the State educational agency  
20                 receives under this part as general funds to  
21                 support any educational purpose described in  
22                 the Elementary and Secondary Education Act  
23                 of 1965, needs-based student or teacher higher  
24                 education programs, or the non-Federal share  
25                 of costs of title XIX of the Social Security Act.

1           “(B) 40 PERCENT RULE.—For any fiscal  
2           year for which States are allocated the max-  
3           imum amount of grants pursuant to section  
4           611(a)(2), a State educational agency may  
5           treat not more than 40 percent of the amount  
6           of funds the State educational agency receives  
7           under this part as general funds to support any  
8           educational purpose described in the Elemen-  
9           tary and Secondary Education Act of 1965,  
10          needs-based student or teacher higher education  
11          programs, or the non-Federal share of costs of  
12          title XIX of the Social Security Act, subject to  
13          subparagraph (C).

14          “(C) REQUIREMENT.—A State educational  
15          agency may exercise its authority pursuant to  
16          subparagraph (B) only if the State educational  
17          agency uses an amount of the 40 percent funds  
18          from subparagraph (B) that represents 15 per-  
19          cent of the total amount of funds the State edu-  
20          cational agency receives under this part, to pro-  
21          vide, or to pay or reimburse local educational  
22          agencies for providing, early intervening  
23          prereferral services pursuant to subsection (f).

24          “(2) PROHIBITION.—Notwithstanding sub-  
25          section (a), if the Secretary determines that a State

1 educational agency is unable to establish, maintain,  
 2 or oversee programs of free appropriate public edu-  
 3 cation that meet the requirements of this part, then  
 4 the Secretary shall prohibit the State educational  
 5 agency from treating funds allocated under this part  
 6 as general funds pursuant to paragraph (1).

7 “(3) REPORT.—For each fiscal year for which  
 8 a State educational agency exercises its authority  
 9 pursuant to paragraph (1) and treats Federal funds  
 10 as general funds, the State educational agency shall  
 11 report to the Secretary the amount of funds so  
 12 treated and the activities that were funded with such  
 13 funds.

14 **“SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS,**  
 15 **INDIVIDUALIZED EDUCATION PROGRAMS,**  
 16 **AND EDUCATIONAL PLACEMENTS.**

17 “(a) EVALUATIONS AND REEVALUATIONS.—

18 “(1) INITIAL EVALUATIONS.—

19 “(A) IN GENERAL.—A State educational  
 20 agency, other State agency, or local educational  
 21 agency shall conduct a full and individual initial  
 22 evaluation in accordance with this paragraph  
 23 and subsection (b), before the initial provision  
 24 of special education and related services to a  
 25 child with a disability under this part.

1           “(B) REQUEST FOR INITIAL EVALUA-  
2           TION.—Consistent with subparagraph (D), ei-  
3           ther a parent of a child, or a State educational  
4           agency, other State agency, or local educational  
5           agency may initiate a request for an initial eval-  
6           uation to determine if the child is a child with  
7           a disability.

8           “(C) PROCEDURES.—Such initial evalua-  
9           tion shall consist of procedures—

10           “(i) to determine whether a child is a  
11           child with a disability (as defined in sec-  
12           tion 602(3)) within 60 days of receiving  
13           parental consent for the evaluation, or, if  
14           the State has established a timeframe  
15           within which the evaluation must be con-  
16           ducted, within such timeframe; and

17           “(ii) to determine the educational  
18           needs of such child.

19           “(D) PARENTAL CONSENT.—

20           “(i) IN GENERAL.—The agency pro-  
21           posing to conduct an initial evaluation to  
22           determine if the child qualifies as a child  
23           with a disability as defined in section  
24           602(3) (A) or (B) shall obtain an informed  
25           consent from the parent of such child be-

1 fore the evaluation is conducted. Parental  
2 consent for evaluation shall not be con-  
3 strued as consent for placement for receipt  
4 of special education and related services.

5 “(ii) REFUSAL.—If the parents of  
6 such child refuse consent for the evalua-  
7 tion, the agency may continue to pursue an  
8 evaluation by utilizing the mediation and  
9 due process procedures under section 615,  
10 except to the extent inconsistent with State  
11 law relating to parental consent.

12 “(iii) REFUSAL OR FAILURE TO CON-  
13 SENT.—If the parent of a child does not  
14 provide informed consent to the receipt of  
15 special education and related services, or  
16 the parent fails to respond to a request to  
17 provide the consent, the local educational  
18 agency shall not be considered to be in vio-  
19 lation of the requirement to make available  
20 a free appropriate public education to the  
21 child.

22 “(2) REEVALUATIONS.—

23 “(A) IN GENERAL.—A local educational  
24 agency shall ensure that a reevaluation of each

1 child with a disability is conducted in accord-  
 2 ance with subsections (b) and (c)—

3 “(i) if the local educational agency de-  
 4 termines that the educational or related  
 5 services needs, including improved aca-  
 6 demic achievement and functional perform-  
 7 ance, of the child warrant a reevaluation;  
 8 or

9 “(ii) if the child’s parents or teacher  
 10 requests a reevaluation.

11 “(B) LIMITATION.—A reevaluation con-  
 12 ducted under subparagraph (A) shall occur—

13 “(i) not more than once a year, unless  
 14 the parent and the local educational agen-  
 15 cy agree otherwise; and

16 “(ii) at least once every 3 years, un-  
 17 less the parent and the local educational  
 18 agency agree that a reevaluation is unnec-  
 19 essary.

20 “(b) EVALUATION PROCEDURES.—

21 “(1) NOTICE.—The local educational agency  
 22 shall provide notice to the parents of a child with a  
 23 disability, in accordance with subsections (b)(3),  
 24 (b)(4), and (c) of section 615, that describes any



1 evaluation procedures such agency proposes to con-  
2 duct.

3 “(2) CONDUCT OF EVALUATION.—In con-  
4 ducting the evaluation, the local educational agency  
5 shall—

6 “(A) use a variety of assessment tools and  
7 strategies to gather relevant functional, develop-  
8 mental, and academic information, including in-  
9 formation provided by the parent, that may as-  
10 sist in determining—

11 “(i) whether the child is a child with  
12 a disability; and

13 “(ii) the content of the child’s individ-  
14 ualized education program, including infor-  
15 mation related to enabling the child to be  
16 involved in and progress in the general  
17 curriculum, or for preschool children, to  
18 participate in appropriate activities;

19 “(B) not use any single procedure, meas-  
20 ure, or assessment as the sole criterion for de-  
21 termining whether a child is a child with a dis-  
22 ability or determining an appropriate edu-  
23 cational program for the child; and

24 “(C) use technically sound instruments  
25 that may assess the relative contribution of cog-

1           nitive and behavioral factors, in addition to  
2           physical or developmental factors.

3           “(3) ADDITIONAL REQUIREMENTS.—Each local  
4           educational agency shall ensure that—

5                   “(A) tests and other evaluation materials  
6           used to assess a child under this section—

7                           “(i) are selected and administered so  
8                           as not to be discriminatory on a racial or  
9                           cultural basis;

10                           “(ii) are provided and administered,  
11                           to the extent practicable, in the language  
12                           and form most likely to yield accurate in-  
13                           formation on what the child knows and can  
14                           do academically, developmentally, and  
15                           functionally;

16                           “(iii) are used for purposes for which  
17                           the assessments or measures are valid and  
18                           reliable;

19                           “(iv) are administered by trained and  
20                           knowledgeable personnel; and

21                           “(v) are administered in accordance  
22                           with any instructions provided by the pro-  
23                           ducer of such tests;

24                           “(B) the child is assessed in all areas of  
25           suspected disability; and

1           “(C) assessment tools and strategies that  
 2           provide relevant information that directly as-  
 3           sists persons in determining the educational  
 4           needs of the child are provided.

5           “(4) DETERMINATION OF ELIGIBILITY.—Upon  
 6           completion of administration of tests and other eval-  
 7           uation materials—

8           “(A) the determination of whether the  
 9           child is a child with a disability as defined in  
 10          section 602(3) shall be made by a team of  
 11          qualified professionals and the parent of the  
 12          child in accordance with paragraph (5); and

13          “(B) a copy of the evaluation report and  
 14          the documentation of determination of eligibility  
 15          shall be given to the parent.

16          “(5) SPECIAL RULE FOR ELIGIBILITY DETER-  
 17          MINATION.—In making a determination of eligibility  
 18          under paragraph (4)(A), a child shall not be deter-  
 19          mined to be a child with a disability if the deter-  
 20          minant factor for such determination is—

21          “(A) lack of scientifically based instruction  
 22          in reading;

23          “(B) lack of instruction in mathematics; or

24          “(C) limited English proficiency.

25          “(6) SPECIFIC LEARNING DISABILITIES.—

1           “(A) IN GENERAL.—Notwithstanding sec-  
 2           tion 607, when determining whether a child has  
 3           a specific learning disability as defined in sec-  
 4           tion 602, a local educational agency shall not be  
 5           required to take into consideration whether a  
 6           child has a severe discrepancy between achieve-  
 7           ment and intellectual ability in oral expression,  
 8           listening comprehension, written expression,  
 9           basic reading skill, reading comprehension,  
 10          mathematical calculation, or mathematical rea-  
 11          soning.

12           “(B) ADDITIONAL AUTHORITY.—In deter-  
 13          mining whether a child has a specific learning  
 14          disability, a local educational agency may use a  
 15          process that determines if the child responds to  
 16          scientific, research-based intervention.

17          “(c) ADDITIONAL REQUIREMENTS FOR EVALUATION  
 18          AND REEVALUATIONS.—

19           “(1) REVIEW OF EXISTING EVALUATION  
 20          DATA.—As part of an initial evaluation (if appro-  
 21          priate) and as part of any reevaluation under this  
 22          section, the IEP Team described in subsection  
 23          (d)(1)(B) and other qualified professionals, as ap-  
 24          propriate, shall—

1           “(A) review existing evaluation data on the  
2 child, including evaluations and information  
3 provided by the parents of the child, current  
4 classroom-based assessments, and observations,  
5 and teacher and related services providers ob-  
6 servations; and

7           “(B) on the basis of that review, and input  
8 from the child’s parents, identify what addi-  
9 tional data, if any, are needed to determine—

10           “(i) whether the child has a particular  
11 category of disability, as described in sec-  
12 tion 602(3), or, in case of a reevaluation of  
13 a child, whether the child continues to have  
14 such a disability;

15           “(ii) the present levels of performance  
16 and educational needs of the child;

17           “(iii) whether the child needs special  
18 education and related services, or in the  
19 case of a reevaluation of a child, whether  
20 the child continues to need special edu-  
21 cation and related services; and

22           “(iv) whether any additions or modi-  
23 fications to the special education and re-  
24 lated services are needed to enable the  
25 child to meet the measurable annual goals

1 set out in the individualized education pro-  
2 gram of the child and to participate, as ap-  
3 propriate, in the general curriculum.

4 “(2) SOURCE OF DATA.—The local educational  
5 agency shall administer such tests and other evalua-  
6 tion materials as may be needed to produce the data  
7 identified by the IEP Team under paragraph (1)(B).

8 “(3) PARENTAL CONSENT.—Each local edu-  
9 cational agency shall obtain informed parental con-  
10 sent, in accordance with subsection (a)(1)(D), prior  
11 to conducting any reevaluation of a child with a dis-  
12 ability, except that such informed parental consent  
13 need not be obtained if the local educational agency  
14 can demonstrate that the local educational agency  
15 had taken reasonable measures to obtain such con-  
16 sent and the child’s parent has failed to respond.

17 “(4) REQUIREMENTS IF ADDITIONAL DATA ARE  
18 NOT NEEDED.—If the IEP Team and other qualified  
19 professionals, as appropriate, determine that no ad-  
20 ditional data are needed to determine whether the  
21 child is or continues to be a child with a disability  
22 the local educational agency—

23 “(A) shall notify the child’s parents of—

24 “(i) that determination and the rea-  
25 sons for the determination; and

1                   “(ii) the right of such parents to re-  
2                   quest an assessment to determine whether  
3                   the child is or continues to be a child with  
4                   a disability; and

5                   “(B) shall not be required to conduct such  
6                   an assessment unless requested by the child’s  
7                   parents.

8                   “(5) EVALUATIONS BEFORE CHANGE IN ELIGI-  
9                   BILITY.—

10                   “(A) IN GENERAL.—Except as provided in  
11                   subparagraph (B), a local educational agency  
12                   shall evaluate a child with a disability in ac-  
13                   cordance with this section before determining  
14                   that the child is no longer a child with a dis-  
15                   ability.

16                   “(B) EXCEPTION.—

17                   “(i) IN GENERAL.—The evaluation de-  
18                   scribed in subparagraph (A) shall not be  
19                   required before the termination of a child’s  
20                   eligibility under this part due to gradua-  
21                   tion from secondary school with a regular  
22                   diploma, or to exceeding the age eligibility  
23                   for a free appropriate public education  
24                   under State law.

1 “(ii) SUMMARY OF PERFORMANCE.—

2 For a child whose eligibility under this  
 3 part terminates under circumstances de-  
 4 scribed in clause (i), a local educational  
 5 agency shall provide the child with a sum-  
 6 mary of the child’s academic achievement  
 7 and functional performance, which shall in-  
 8 clude any further recommendations on how  
 9 to assist the child in meeting the child’s  
 10 postsecondary goals.

11 “(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

12 “(1) DEFINITIONS.—As used in this title:

13 “(A) INDIVIDUALIZED EDUCATION PRO-  
 14 GRAM.—

15 “(i) IN GENERAL.—The term ‘individ-  
 16 ualized education program’ or ‘IEP’ means  
 17 a written statement for each child with a  
 18 disability that is developed, reviewed, and  
 19 revised in accordance with this section and  
 20 that includes—

21 “(I) a statement of the child’s  
 22 present levels of academic achieve-  
 23 ment and functional performance, in-  
 24 cluding—



1                   “(aa) how the child’s dis-  
2                   ability affects the child’s involve-  
3                   ment and progress in the general  
4                   curriculum; or

5                   “(bb) for preschool children,  
6                   as appropriate, how the disability  
7                   affects the child’s participation in  
8                   appropriate activities;

9                   “(II) a statement of measurable  
10                  annual goals, including academic and  
11                  functional goals, designed to—

12                  “(aa) meet the child’s needs  
13                  that result from the child’s dis-  
14                  ability to enable the child to be  
15                  involved in and make progress in  
16                  the general curriculum; and

17                  “(bb) meet each of the  
18                  child’s other educational needs  
19                  that result from the child’s dis-  
20                  ability;

21                  “(III) a statement of how the  
22                  child’s progress toward the annual  
23                  goals described in subclause (II) will  
24                  be measured, including through the  
25                  use of quarterly or other periodic re-

1 ports, concurrent with the issuance of  
2 report cards, that delineate the  
3 progress the child is making toward  
4 meeting the annual goals;

5 “(IV) a statement of the special  
6 education and related services, and  
7 supplementary aids and services, to be  
8 provided to the child, or on behalf of  
9 the child, and a statement of the pro-  
10 gram modifications or supports for  
11 school personnel that will be provided  
12 for the child—

13 “(aa) to advance appro-  
14 priately toward attaining the an-  
15 nual goals;

16 “(bb) to be involved in and  
17 make progress in the general cur-  
18 riculum in accordance with sub-  
19 clause (I) and to participate in  
20 extracurricular and other nonaca-  
21 demic activities; and

22 “(cc) to be educated and  
23 participate with other children  
24 with disabilities and nondisabled

1 children in the activities de-  
2 scribed in this paragraph;

3 “(V) an explanation of the ex-  
4 tent, if any, to which the child will not  
5 participate with nondisabled children  
6 in the regular class and in the activi-  
7 ties described in subclause (IV)(cc);

8 “(VI)(aa) a statement of any in-  
9 dividual appropriate accommodations  
10 that are necessary to measure the  
11 academic achievement and functional  
12 performance of the child on State and  
13 districtwide assessments consistent  
14 with section 612(a)(16)(A); and

15 “(bb) if the IEP Team deter-  
16 mines that the child shall take an al-  
17 ternate assessment on a particular  
18 State or districtwide assessment of  
19 student achievement, a statement of  
20 why—

21 “(AA) the child cannot par-  
22 ticipate in the regular assess-  
23 ment; and

1 “(BB) the particular alter-  
2 nate assessment selected is ap-  
3 propriate for the child;

4 “(VII) the projected date for the  
5 beginning of the services and modi-  
6 fications described in subclause (IV),  
7 and the anticipated frequency, loca-  
8 tion, and duration of those services  
9 and modifications; and

10 “(VIII) beginning not later than  
11 the first IEP to be in effect when the  
12 child is 14, and updated annually  
13 thereafter—

14 “(aa) appropriate measur-  
15 able postsecondary goals based  
16 upon age appropriate transition  
17 assessments related to training,  
18 education, employment, and,  
19 where appropriate, independent  
20 living skills;

21 “(bb) the transition services  
22 (including courses of study) need-  
23 ed by the child to reach those  
24 goals, including services to be

provided by other agencies when  
needed; and

“(cc) beginning at least 1  
year before the child reaches the  
age of majority under State law,  
a statement that the child has  
been informed of the child’s  
rights under this title, if any,  
that will transfer to the child on  
reaching the age of majority  
under section 615(m).

“(ii) RULE OF CONSTRUCTION.—  
Nothing in this section shall be construed  
to require—

“(I) that additional information  
be included in a child’s IEP beyond  
what is explicitly required in this sec-  
tion; and

“(II) the IEP Team to include  
information under 1 component of a  
child’s IEP that is already contained  
under another component of such  
IEP.

“(B) INDIVIDUALIZED EDUCATION PRO-  
GRAM TEAM.—The term ‘individualized edu-

1 cation program team’ or ‘IEP Team’ means a  
2 group of individuals composed of—

3 “(i) the parents of a child with a dis-  
4 ability;

5 “(ii) at least 1 regular education  
6 teacher of such child (if the child is, or  
7 may be, participating in the regular edu-  
8 cation environment);

9 “(iii) at least 1 special education  
10 teacher, or where appropriate, at least 1  
11 special education provider of such child;

12 “(iv) a representative of the local edu-  
13 cational agency who—

14 “(I) is qualified to provide, or su-  
15 pervise the provision of, specially de-  
16 signed instruction to meet the unique  
17 needs of children with disabilities;

18 “(II) is knowledgeable about the  
19 general curriculum; and

20 “(III) is knowledgeable about the  
21 availability of resources of the local  
22 educational agency;

23 “(v) an individual who can interpret  
24 the instructional implications of evaluation

1 results, who may be a member of the team  
2 described in clauses (ii) through (vi);

3 “(vi) at the discretion of the parent or  
4 the agency, other individuals who have  
5 knowledge or special expertise regarding  
6 the child, including related services per-  
7 sonnel as appropriate; and

8 “(vii) whenever appropriate, the child  
9 with a disability.

10 “(C) IEP TEAM ATTENDANCE.—

11 “(i) ATTENDANCE NOT NECESSARY.—  
12 A member of the IEP Team shall not be  
13 required to attend an IEP meeting, in  
14 whole or in part, if the parent of a child  
15 with a disability and the local educational  
16 agency agree that the attendance of such  
17 member is not necessary because no modi-  
18 fication to the member’s area of the cur-  
19 riculum or related services is being modi-  
20 fied or discussed in the meeting.

21 “(ii) EXCUSAL.—A member of the  
22 IEP Team may be excused from attending  
23 an IEP meeting, in whole or in part, when  
24 the meeting involves a modification to or

1 discussion of the member's area of the cur-  
2 rriculum or related services, if—

3 “(I) the parent and the local edu-  
4 cational agency consent to the excusal;  
5 and

6 “(II) the member submits input  
7 into the development of the IEP prior  
8 to the meeting.

9 “(2) REQUIREMENT THAT PROGRAM BE IN EF-  
10 FECT.—

11 “(A) IN GENERAL.—At the beginning of  
12 each school year, each local educational agency,  
13 State educational agency, or other State agen-  
14 cy, as the case may be, shall have in effect, for  
15 each child with a disability in its jurisdiction,  
16 an individualized education program, as defined  
17 in paragraph (1)(A).

18 “(B) PROGRAM FOR CHILD AGED 3  
19 THROUGH 5.—In the case of a child with a dis-  
20 ability aged 3 through 5 (or, at the discretion  
21 of the State educational agency, a 2-year-old  
22 child with a disability who will turn age 3 dur-  
23 ing the school year), an individualized family  
24 service plan that contains the material de-  
25 scribed in section 636, and that is developed in



1 accordance with this section, may serve as the  
2 IEP of the child if using that plan as the IEP  
3 is—

4 “(i) consistent with State policy; and

5 “(ii) agreed to by the agency and the  
6 child’s parents.

7 “(3) DEVELOPMENT OF IEP.—

8 “(A) IN GENERAL.—In developing each  
9 child’s IEP, the IEP Team, subject to subpara-  
10 graph (C), shall consider—

11 “(i) the strengths of the child;

12 “(ii) the concerns of the parents for  
13 enhancing the education of their child;

14 “(iii) the results of the initial evalua-  
15 tion or most recent evaluation of the child;  
16 and

17 “(iv) the academic, developmental,  
18 and functional needs of the child.

19 “(B) CONSIDERATION OF SPECIAL FAC-  
20 TORS.—The IEP Team shall—

21 “(i) in the case of a child whose be-  
22 havior impedes the child’s learning or that  
23 of others, provide for positive behavioral  
24 interventions and supports, and other  
25 strategies to address that behavior;

1 “(ii) in the case of a child with limited  
2 English proficiency, consider the language  
3 needs of the child as such needs relate to  
4 the child’s IEP;

5 “(iii) in the case of a child who is  
6 blind or visually impaired—

7 “(I) provide for instruction in  
8 Braille and the use of Braille unless  
9 the IEP Team determines, after an  
10 evaluation of the child’s reading and  
11 writing skills, needs, and appropriate  
12 reading and writing media (including  
13 an evaluation of the child’s future  
14 needs for instruction in Braille or the  
15 use of Braille), that instruction in  
16 Braille or the use of Braille is not ap-  
17 propriate for the child; and

18 “(II) consider, when appropriate,  
19 instructional services related to func-  
20 tional performance skills, orientation  
21 and mobility, and skills in the use of  
22 assistive technology devices, including  
23 low vision devices;

24 “(iv) in the case of a child who is deaf  
25 or hard of hearing, consider the child’s lan-

1 guage and communication needs, opportu-  
2 nities for direct communications with peers  
3 and professional personnel, and access to  
4 the general curriculum and instruction at  
5 the child's academic level in the child's lan-  
6 guage and communication mode; and

7 “(v) consider whether the child re-  
8 quires assistive technology devices and  
9 services.

10 “(C) REQUIREMENT WITH RESPECT TO  
11 REGULAR EDUCATION TEACHER.—A regular  
12 education teacher of the child, as a member of  
13 the IEP Team shall, to the extent appropriate,  
14 participate in the development of the IEP of  
15 the child, including the determination of appro-  
16 priate positive behavioral interventions and sup-  
17 ports, and other strategies, and the determina-  
18 tion of supplementary aids and services, pro-  
19 gram modifications, and support for school per-  
20 sonnel consistent with paragraph (1)(A)(i)(IV).

21 “(D) AGREEMENT.—In making changes to  
22 a child's IEP after the annual IEP meeting for  
23 a school year, the parent of a child with a dis-  
24 ability and the local educational agency may  
25 agree not to convene an IEP meeting for the

1 remainder of the school year, and instead de-  
 2 velop a written document to amend or modify  
 3 the child's current IEP.

4 “(E) CONSOLIDATION OF IEP TEAM MEET-  
 5 INGS.—To the extent possible, the local edu-  
 6 cational agency shall encourage the consolida-  
 7 tion of reevaluations of a child with IEP Team  
 8 meetings for the child.

9 “(4) REVIEW AND REVISION OF IEP.—

10 “(A) IN GENERAL.—The local educational  
 11 agency shall ensure that, subject to subpara-  
 12 graph (B), the IEP Team—

13 “(i) reviews the child's IEP periodi-  
 14 cally, but not less than annually, to deter-  
 15 mine whether the annual goals for the  
 16 child are being achieved; and

17 “(ii) revise the IEP as appropriate to  
 18 address—

19 “(I) any lack of expected  
 20 progress toward the annual goals and  
 21 in the general curriculum, where ap-  
 22 propriate;

23 “(II) the results of any reevalua-  
 24 tion conducted under this section;

1 “(III) information about the  
 2 child provided to, or by, the parents,  
 3 as described in subsection (c)(1)(B);

4 “(IV) the child’s anticipated  
 5 needs; or

6 “(V) other matters.

7 “(B) REQUIREMENT WITH RESPECT TO  
 8 REGULAR EDUCATION TEACHER.—A regular  
 9 education teacher of the child, as a member of  
 10 the IEP Team, shall, consistent with paragraph  
 11 (1)(C), participate in the review and revision of  
 12 the IEP of the child.

13 “(5) THREE-YEAR IEP.—

14 “(A) DEVELOPMENT OF 3-YEAR IEP.—The  
 15 local educational agency may offer a child with  
 16 a disability who has reached the age of 18, the  
 17 option of developing a comprehensive 3-year  
 18 IEP. With the consent of the parent, when ap-  
 19 propriate, the IEP Team shall develop an IEP,  
 20 as described in paragraphs (1) and (3), that is  
 21 designed to serve the child for the final 3-year  
 22 transition period, which includes a statement  
 23 of—

24 “(i) measurable goals that will enable  
 25 the child to be involved in and make

1 progress in the general education cur-  
 2 riculum and that will meet the child's tran-  
 3 sitional and postsecondary needs that re-  
 4 sult from the child's disability; and

5 “(ii) measurable annual goals for  
 6 measuring progress toward meeting the  
 7 postsecondary goals described in clause (i).

8 “(B) REVIEW AND REVISION OF 3-YEAR  
 9 IEP.—

10 “(i) REQUIREMENT.—Each year the  
 11 local educational agency shall ensure that  
 12 the IEP Team—

13 “(I) provides an annual review of  
 14 the child's IEP to determine the  
 15 child's current levels of progress and  
 16 determine whether the annual goals  
 17 for the child are being achieved; and

18 “(II) revises the IEP, as appro-  
 19 priate, to enable the child to continue  
 20 to meet the measurable transition  
 21 goals set out in the IEP.

22 “(ii) COMPREHENSIVE REVIEW.—If  
 23 the review under clause (i) determines that  
 24 the child is not making sufficient progress  
 25 toward the goals described in subpara-

graph (A), the local educational agency shall ensure that the IEP Team provides a review, within 30 calendar days, of the IEP under paragraph (4).

“(iii) PREFERENCE.—At the request of the child, or when appropriate, the parent, the IEP Team shall conduct a review of the child’s 3-year IEP under paragraph (4) rather than an annual review under subparagraph (B)(i).

“(6) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

“(7) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—

“(A) IN GENERAL.—The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

1           “(i) The requirements contained in  
2           section 612(a)(16) and paragraph  
3           (1)(A)(i)(V) (relating to participation of  
4           children with disabilities in general assess-  
5           ments).

6           “(ii) The requirements of items (aa)  
7           and (bb) of paragraph (1)(A)(i)(VII) (re-  
8           lating to transition planning and transition  
9           services), do not apply with respect to such  
10          children whose eligibility under this part  
11          will end, because of their age, before they  
12          will be released from prison.

13          “(B) ADDITIONAL REQUIREMENT.—If a  
14          child with a disability is convicted as an adult  
15          under State law and incarcerated in an adult  
16          prison, the child’s IEP Team may modify the  
17          child’s IEP or placement notwithstanding the  
18          requirements of sections 612(a)(5)(A) and  
19          614(d)(1)(A) if the State has demonstrated a  
20          bona fide security or compelling penological in-  
21          terest that cannot otherwise be accommodated.

22          “(e) EDUCATIONAL PLACEMENTS.—Each local edu-  
23          cational agency or State educational agency shall ensure  
24          that the parents of each child with a disability are mem-



1 bers of any group that makes decisions on the educational  
 2 placement of their child.

3 “(f) ALTERNATIVE MEANS OF MEETING PARTICIPA-  
 4 TION.—When conducting IEP Team meetings and place-  
 5 ment meetings pursuant to this section, the parent of a  
 6 child with a disability and a local educational agency may  
 7 agree to use alternative means of meeting participation,  
 8 such as video conferences and conference calls.

9 **“SEC. 615. PROCEDURAL SAFEGUARDS.**

10 “(a) ESTABLISHMENT OF PROCEDURES.—Any State  
 11 educational agency, State agency, or local educational  
 12 agency that receives assistance under this part shall estab-  
 13 lish and maintain procedures in accordance with this sec-  
 14 tion to ensure that children with disabilities and their par-  
 15 ents are guaranteed procedural safeguards with respect to  
 16 the provision of free appropriate public education by such  
 17 agencies.

18 “(b) TYPES OF PROCEDURES.—The procedures re-  
 19 quired by this section shall include—

20 “(1) an opportunity for the parents of a child  
 21 with a disability to examine all records relating to  
 22 such child and to participate in meetings with re-  
 23 spect to the identification, evaluation, and edu-  
 24 cational placement of the child, and the provision of  
 25 a free appropriate public education to such child,

1 and to obtain an independent educational evaluation  
2 of the child;

3 “(2) procedures to protect the rights of the  
4 child whenever the parents of the child are not  
5 known, the agency cannot, after reasonable efforts,  
6 locate the parents, or the child is a ward of the  
7 State, including the assignment of an individual  
8 (who shall not be an employee of the State edu-  
9 cational agency, the local educational agency, or any  
10 other agency that is involved in the education or  
11 care of the child) to act as a surrogate for the par-  
12 ents;

13 “(3) written prior notice to the parents of the  
14 child, in accordance with subsection (c)(1), whenever  
15 the local educational agency—

16 “(A) proposes to initiate or change; or

17 “(B) refuses to initiate or change,  
18 the identification, evaluation, or educational place-  
19 ment of the child, or the provision of a free appro-  
20 priate public education to the child;

21 “(4) procedures designed to ensure that the no-  
22 tice required by paragraph (3) is in the native lan-  
23 guage of the parents, unless it clearly is not feasible  
24 to do so;

1           “(5) an opportunity for mediation in accordance  
2       with subsection (e);

3           “(6) an opportunity for either party to present  
4       complaints with respect to any matter relating to the  
5       identification, evaluation, or educational placement  
6       of the child, or the provision of a free appropriate  
7       public education to such child;

8           “(7)(A) procedures that require either party, or  
9       the attorney representing a party, to provide due  
10      process complaint notice in accordance with sub-  
11      section (c)(2) (which shall remain confidential)—

12           “(i) to the other party, in the complaint  
13      filed under paragraph (6), and forward a copy  
14      of such notice to the State educational agency;  
15      and

16           “(ii) that shall include—

17           “(I) the name of the child, the ad-  
18      dress of the residence of the child, and the  
19      name of the school the child is attending;

20           “(II) a description of the nature of  
21      the problem of the child relating to such  
22      proposed initiation or change, including  
23      facts relating to such problem; and

1 “(III) a proposed resolution of the  
 2 problem to the extent known and available  
 3 to the party at the time; and

4 “(B) a requirement that a party may not have  
 5 a due process hearing until the party, or the attor-  
 6 ney representing the party, files a notice that meets  
 7 the requirements of subparagraph (A)(ii);

8 “(8) a requirement that the local educational  
 9 agency shall send a prior written notice pursuant to  
 10 subsection (c)(1) in response to a parent’s due proc-  
 11 ess complaint notice under paragraph (7) if the local  
 12 educational agency has not sent such a prior written  
 13 notice to the parent regarding the subject matter  
 14 contained in the parent’s due process complaint no-  
 15 tice; and

16 “(9) procedures that require the State edu-  
 17 cational agency to develop a model form to assist  
 18 parents in filing a complaint and due process com-  
 19 plaint notice in accordance with paragraphs (6) and  
 20 (7), respectively.

21 “(c) NOTIFICATION REQUIREMENTS.—

22 “(1) CONTENT OF PRIOR WRITTEN NOTICE.—  
 23 The prior written notice of the local educational  
 24 agency required by subsection (b)(3) shall include—

1           “(A) a description of the action proposed  
2 or refused by the agency;

3           “(B) an explanation of why the agency  
4 proposes or refuses to take the action;

5           “(C) a description of any other options  
6 that the agency considered and the reasons why  
7 those options were rejected;

8           “(D) a description of each evaluation pro-  
9 cedure, test, record, or report the agency used  
10 as a basis for the proposed or refused action;

11          “(E) a description of any other factors  
12 that are relevant to the agency’s proposal or re-  
13 fusar;

14          “(F) a statement that the parents of a  
15 child with a disability have protection under the  
16 procedural safeguards of this part and, if this  
17 notice is not an initial referral for evaluation,  
18 the means by which a copy of a description of  
19 the procedural safeguards can be obtained; and

20          “(G) sources for parents to contact to ob-  
21 tain assistance in understanding the provisions  
22 of this part.

23          “(2) DUE PROCESS COMPLAINT NOTICE.—

24               “(A) IN GENERAL.—The due process com-  
25 plaint notice required under subsection

1 (b)(7)(A) shall be deemed to be sufficient un-  
 2 less the party receiving the notice notifies the  
 3 hearing officer in writing that the party believes  
 4 the notice has not met the requirements of that  
 5 subsection.

6 “(B) TIMING.—The party sending a hear-  
 7 ing officer notification under subparagraph (A)  
 8 shall send the notification within 20 days of re-  
 9 ceiving the complaint.

10 “(C) DETERMINATION.—Within 5 days of  
 11 receipt of the notification provided under sub-  
 12 paragraph (B), the hearing officer shall make a  
 13 determination on the face of the notice of  
 14 whether the notification meets the requirements  
 15 of subsection (b)(7)(A).

16 “(d) PROCEDURAL SAFEGUARDS NOTICE.—

17 “(1) IN GENERAL.—A copy of the procedural  
 18 safeguards available to the parents of a child with  
 19 a disability shall be given to the parents only 1 time  
 20 a year, except that a copy also shall be given to the  
 21 parents—

22 “(A) upon initial referral or parental re-  
 23 quest for evaluation;

24 “(B) upon registration of a complaint  
 25 under subsection (b)(6);

1           “(C) at any individualized education pro-  
2           gram meeting required in accordance with sub-  
3           section (k)(1); and

4           “(D) upon request by a parent.

5           “(2) CONTENTS.—The procedural safeguards  
6           notice shall include a full explanation of the proce-  
7           dural safeguards, written in the native language of  
8           the parents, unless it clearly is not feasible to do so,  
9           and written in an easily understandable manner,  
10          available under this section and under regulations  
11          promulgated by the Secretary relating to—

12           “(A) independent educational evaluation;

13           “(B) prior written notice;

14           “(C) parental consent;

15           “(D) access to educational records;

16           “(E) opportunity to present complaints, in-  
17          cluding the time period in which to make those  
18          complaints;

19           “(F) the child’s placement during pend-  
20          ency of due process proceedings;

21           “(G) procedures for students who are sub-  
22          ject to placement in an interim alternative edu-  
23          cational setting;

1           “(H) requirements for unilateral placement  
 2           by parents of children in private schools at pub-  
 3           lic expense;

4           “(I) mediation;

5           “(J) due process hearings, including re-  
 6           quirements for disclosure of evaluation results  
 7           and recommendations;

8           “(K) State-level appeals (if applicable in  
 9           that State);

10          “(L) civil actions, including the time pe-  
 11          riod in which to file such actions; and

12          “(M) attorney’s fees.

13          “(e) MEDIATION.—

14           “(1) IN GENERAL.—Any State educational  
 15           agency or local educational agency that receives as-  
 16           sistance under this part shall ensure that procedures  
 17           are established and implemented to allow parties to  
 18           disputes involving any matter, including matters  
 19           arising prior to the filing of a complaint pursuant to  
 20           subsection (b)(6), to resolve such disputes through a  
 21           mediation process.

22           “(2) REQUIREMENTS.—Such procedures shall  
 23           meet the following requirements:

24           “(A) The procedures shall ensure that the  
 25           mediation process—



1 “(i) is voluntary on the part of the  
2 parties;

3 “(ii) is not used to deny or delay a  
4 parent’s right to a due process hearing  
5 under subsection (f), or to deny any other  
6 rights afforded under this part; and

7 “(iii) is conducted by a qualified and  
8 impartial mediator who is trained in effec-  
9 tive mediation techniques.

10 “(B) OPPORTUNITY TO MEET WITH A DIS-  
11 INTERESTED PARTY.—A local educational agen-  
12 cy or a State agency may establish procedures  
13 to offer to parents who choose not to use the  
14 mediation process, an opportunity to meet, at a  
15 time and location convenient to the parents,  
16 with a disinterested party who is under contract  
17 with—

18 “(i) a parent training and information  
19 center or community parent resource cen-  
20 ter in the State established under section  
21 671 or 672; or

22 “(ii) an appropriate alternative dis-  
23 pute resolution entity,  
24 to encourage the use, and explain the benefits,  
25 of the mediation process to the parents.

1           “(C) LIST OF QUALIFIED MEDIATORS.—

2           The State shall maintain a list of individuals  
3           who are qualified mediators and knowledgeable  
4           in laws and regulations relating to the provision  
5           of special education and related services.

6           “(D) COSTS.—The State shall bear the  
7           cost of the mediation process, including the  
8           costs of meetings described in subparagraph  
9           (B).

10          “(E) SCHEDULING AND LOCATION.—Each  
11          session in the mediation process shall be sched-  
12          uled in a timely manner and shall be held in a  
13          location that is convenient to the parties to the  
14          dispute.

15          “(F) WRITTEN MEDIATION AGREEMENT.—  
16          An agreement reached by the parties to the dis-  
17          pute in the mediation process shall be set forth  
18          in a written mediation agreement that is en-  
19          forceable in any State court of competent juris-  
20          diction or in a district court of the United  
21          States.

22          “(G) MEDIATION DISCUSSIONS.—Discus-  
23          sions that occur during the mediation process  
24          shall be confidential and may not be used as  
25          evidence in any subsequent due process hear-

ings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

“(f) IMPARTIAL DUE PROCESS HEARING.—

“(1) IN GENERAL.—

“(A) HEARING.—Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

“(B) OPPORTUNITY TO RESOLVE COMPLAINT.—

“(i) PRELIMINARY MEETING.—Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the IEP Team—

“(I) within 15 days of receiving notice of the parents’ complaint;

1                   “(II) which shall include a rep-  
2                   resentative of the public agency who  
3                   has decisionmaking authority on be-  
4                   half of such agency; and

5                   “(III) which may not include an  
6                   attorney of the local educational agen-  
7                   cy unless the parent is accompanied  
8                   by an attorney; and

9                   “(IV) where the parents of the  
10                  child discuss their complaint, and the  
11                  specific issues that form the basis of  
12                  the complaint, and the local edu-  
13                  cational agency is provided the oppor-  
14                  tunity to resolve the complaint,  
15                  unless the parents and the local edu-  
16                  cational agency agree in writing to waive  
17                  such meeting, or agree to use the medi-  
18                  ation process described in subsection (e).

19                  “(ii) HEARING.—If the local edu-  
20                  cational agency has not resolved the com-  
21                  plaint to the satisfaction of the parents  
22                  within 15 days of the receipt of the com-  
23                  plaint, the due process hearing may occur,  
24                  and all of the applicable timelines for a

1 due process hearing under this part shall  
2 commence.

3 “(iii) WRITTEN SETTLEMENT AGREE-  
4 MENT.—In the case that an agreement is  
5 reached to resolve the complaint at such  
6 meeting, the agreement shall be set forth  
7 in a written settlement agreement that is  
8 enforceable in any State court of com-  
9 petent jurisdiction or in a district court of  
10 the United States and signed by both the  
11 parent and a representative of the public  
12 agency who has decisionmaking authority  
13 on behalf of such agency.

14 “(2) DISCLOSURE OF EVALUATIONS AND REC-  
15 OMMENDATIONS.—

16 “(A) IN GENERAL.—Not less than 5 busi-  
17 ness days prior to a hearing conducted pursu-  
18 ant to paragraph (1), each party shall disclose  
19 to all other parties all evaluations completed by  
20 that date, and recommendations based on the  
21 offering party’s evaluations, that the party in-  
22 tends to use at the hearing.

23 “(B) FAILURE TO DISCLOSE.—A hearing  
24 officer may bar any party that fails to comply  
25 with subparagraph (A) from introducing the

1 relevant evaluation or recommendation at the  
2 hearing without the consent of the other party.

3 “(3) LIMITATIONS ON HEARING.—

4 “(A) PERSON CONDUCTING HEARING.—A  
5 hearing officer conducting a hearing pursuant  
6 to paragraph (1)(A) shall, at a minimum—

7 “(i) not be—

8 “(I) an employee of the State  
9 educational agency or the local edu-  
10 cational agency involved in the edu-  
11 cation or care of the child; or

12 “(II) a person having a personal  
13 or professional interest that conflicts  
14 with the person’s objectivity in the  
15 hearing;

16 “(ii) possess a fundamental under-  
17 standing of this Act, Federal and State  
18 regulations pertaining to this Act, and in-  
19 terpretations of this Act by State and Fed-  
20 eral courts;

21 “(iii) possess the knowledge and abil-  
22 ity to conduct hearings in accordance with  
23 appropriate, standard legal practice; and

24 “(iv) possess the knowledge and abil-  
25 ity to render and write decisions in accord-

1           ance with appropriate, standard legal prac-  
2           tice.

3           “(B) SUBJECT MATTER OF HEARING.—

4           The party requesting the due process hearing  
5           shall not be allowed to raise issues at the due  
6           process hearing that were not raised in the no-  
7           tice filed under subsection (b)(7), unless the  
8           other party agrees otherwise.

9           “(C) RULE OF CONSTRUCTION.—Nothing  
10          in this section shall be construed to preclude a  
11          parent from filing a separate due process com-  
12          plaint on an issue separate from a due process  
13          complaint already filed.

14          “(D) STATUTE OF LIMITATIONS.—A par-  
15          ent or public agency shall request an impartial  
16          due process hearing within 2 years of the date  
17          the parent or public agency knew or should  
18          have known about the alleged action that forms  
19          the basis of the complaint, or, if the State has  
20          an explicit time limitation for requesting such a  
21          hearing under this part, in such time as the  
22          State law allows.

23          “(E) EXCEPTION TO THE STATUTE OF  
24          LIMITATIONS.—The statute of limitations de-  
25          scribed in subparagraph (D) shall not apply if

1 the parent was prevented from requesting the  
2 hearing due to—

3 “(i) failure of the local educational  
4 agency to provide prior written or proce-  
5 dural safeguards notices;

6 “(ii) false representations that the  
7 local educational agency was attempting to  
8 resolve the problem forming the basis of  
9 the complaint; or

10 “(iii) the local educational agency’s  
11 withholding of information from parents.

12 “(F) DECISION OF HEARING OFFICER.—

13 “(i) IN GENERAL.—Subject to clause  
14 (ii), a decision made by a hearing officer  
15 shall be made on substantive grounds  
16 based on a determination of whether the  
17 child received a free appropriate public  
18 education.

19 “(ii) PROCEDURAL ISSUES.—In mat-  
20 ters alleging a procedural violation, a hear-  
21 ing officer may find that a child did not re-  
22 ceive a free appropriate public education  
23 only if the procedural inadequacies—



1                   “(I) compromised the child’s  
2                   right to an appropriate public edu-  
3                   cation;

4                   “(II) seriously hampered the par-  
5                   ents’ opportunity to participate in the  
6                   process; or

7                   “(III) caused a deprivation of  
8                   educational benefits.

9                   “(iii) ENFORCEABILITY.—A decision  
10                  made by the hearing officer is enforceable  
11                  in any State court of competent jurisdic-  
12                  tion or in a district court of the United  
13                  States, unless either party appeals such de-  
14                  cision under the provision of subsection (g)  
15                  or (i)(2).

16                  “(G) RULE OF CONSTRUCTION.—Nothing  
17                  in this section shall be construed to affect the  
18                  right of a parent to file a complaint with the  
19                  State educational agency.

20                  “(g) APPEAL.—If the hearing required by subsection  
21                  (f) is conducted by a local educational agency, any party  
22                  aggrieved by the findings and decision rendered in such  
23                  a hearing may appeal such findings and decision to the  
24                  State educational agency. Such State educational agency  
25                  shall conduct an impartial review of such decision. The

1 officer conducting such review shall make an independent  
2 decision upon completion of such review.

3 “(h) SAFEGUARDS.—Any party to a hearing con-  
4 ducted pursuant to subsection (f) or (k), or an appeal con-  
5 ducted pursuant to subsection (g), shall be accorded—

6 “(1) the right to be accompanied and advised  
7 by counsel and by individuals with special knowledge  
8 or training with respect to the problems of children  
9 with disabilities;

10 “(2) the right to present evidence and confront,  
11 cross-examine, and compel the attendance of wit-  
12 nesses;

13 “(3) the right to a written, or, at the option of  
14 the parents, electronic verbatim record of such hear-  
15 ing; and

16 “(4) the right to a written, or, at the option of  
17 the parents, electronic findings of fact and decisions,  
18 which findings and decisions—

19 “(A) shall be made available to the public  
20 consistent with the requirements of section  
21 617(c) (relating to the confidentiality of data,  
22 information, and records); and

23 “(B) shall be transmitted to the advisory  
24 panel established pursuant to section  
25 612(a)(20).

1 “(i) ADMINISTRATIVE PROCEDURES.—

2 “(1) IN GENERAL.—

3 “(A) DECISION MADE IN HEARING.—A de-  
4 cision made in a hearing conducted pursuant to  
5 subsection (f) or (k) shall be final, except that  
6 any party involved in such hearing may appeal  
7 such decision under the provisions of subsection  
8 (g) and paragraph (2).

9 “(B) DECISION MADE AT APPEAL.—A de-  
10 cision made under subsection (g) shall be final,  
11 except that any party may bring an action  
12 under paragraph (2).

13 “(2) RIGHT TO BRING CIVIL ACTION.—

14 “(A) IN GENERAL.—Any party aggrieved  
15 by the findings and decision made under sub-  
16 section (f) or (k) who does not have the right  
17 to an appeal under subsection (g), and any  
18 party aggrieved by the findings and decision  
19 under this subsection, shall have the right to  
20 bring a civil action with respect to the com-  
21 plaint presented pursuant to this section, which  
22 action may be brought in any State court of  
23 competent jurisdiction or in a district court of  
24 the United States, without regard to the  
25 amount in controversy.

1           “(B) LIMITATION.—The party bringing the  
 2           action shall have 90 days from the date of the  
 3           decision of the hearing officer to bring such an  
 4           action, or, if the State has an explicit time limi-  
 5           tation for bringing such action under this part,  
 6           in such time as the State law allows.

7           “(C) ADDITIONAL REQUIREMENTS.—In  
 8           any action brought under this paragraph, the  
 9           court—

10               “(i) shall receive the records of the  
 11               administrative proceedings;

12               “(ii) shall hear additional evidence at  
 13               the request of a party; and

14               “(iii) basing its decision on the pre-  
 15               ponderance of the evidence, shall grant  
 16               such relief as the court determines is ap-  
 17               propriate.

18           “(3) JURISDICTION OF DISTRICT COURTS; AT-  
 19           TORNEYS’ FEES.—

20           “(A) IN GENERAL.—The district courts of  
 21           the United States shall have jurisdiction of ac-  
 22           tions brought under this section without regard  
 23           to the amount in controversy.

24           “(B) AWARD OF ATTORNEYS’ FEES.—In  
 25           any action or proceeding brought under this

1 section, the court, in its discretion, may award  
 2 reasonable attorneys' fees as part of the costs  
 3 to the parents of a child with a disability who  
 4 is the prevailing party.

5 “(C) DETERMINATION OF AMOUNT OF AT-  
 6 TORNEYS' FEES.—Fees awarded under this  
 7 paragraph shall be based on rates prevailing in  
 8 the community in which the action or pro-  
 9 ceeding arose for the kind and quality of serv-  
 10 ices furnished. No bonus or multiplier may be  
 11 used in calculating the fees awarded under this  
 12 subsection.

13 “(D) PROHIBITION OF ATTORNEYS' FEES  
 14 AND RELATED COSTS FOR CERTAIN SERV-  
 15 ICES.—

16 “(i) IN GENERAL.—Attorneys' fees  
 17 may not be awarded and related costs may  
 18 not be reimbursed in any action or pro-  
 19 ceeding under this section for services per-  
 20 formed subsequent to the time of a written  
 21 offer of settlement to a parent if—

22 “(I) the offer is made within the  
 23 time prescribed by Rule 68 of the  
 24 Federal Rules of Civil Procedure or,  
 25 in the case of an administrative pro-

1                   ceeding, at any time more than 10  
2                   days before the proceeding begins;

3                   “(II) the offer is not accepted  
4                   within 10 days; and

5                   “(III) the court or administrative  
6                   hearing officer finds that the relief fi-  
7                   nally obtained by the parents is not  
8                   more favorable to the parents than  
9                   the offer of settlement.

10                  “(ii) IEP TEAM MEETINGS.—Attor-  
11                  neys’ fees may not be awarded relating to  
12                  any meeting of the IEP Team unless such  
13                  meeting is convened as a result of an ad-  
14                  ministrative proceeding or judicial action,  
15                  or, at the discretion of the State, for a me-  
16                  diation described in subsection (e).

17                  “(iii) OPPORTUNITY TO RESOLVE  
18                  COMPLAINTS.—A meeting conducted pur-  
19                  suant to subsection (f)(1)(B)(i) shall not  
20                  be considered—

21                         “(I) a meeting convened as a re-  
22                         sult of an administrative hearing or  
23                         judicial action; or

1                   “(II) an administrative hearing  
2                   or judicial action for purposes of this  
3                   paragraph.

4                   “(E) EXCEPTION TO PROHIBITION ON AT-  
5                   TORNEYS’ FEES AND RELATED COSTS.—Not-  
6                   withstanding subparagraph (D), an award of  
7                   attorneys’ fees and related costs may be made  
8                   to a parent who is the prevailing party and who  
9                   was substantially justified in rejecting the set-  
10                  tlement offer.

11                  “(F) REDUCTION IN AMOUNT OF ATTOR-  
12                  NEYS’ FEES.—Except as provided in subpara-  
13                  graph (G), whenever the court finds that—

14                   “(i) the parent, or the parent’s attor-  
15                   ney, during the course of the action or pro-  
16                   ceeding, unreasonably protracted the final  
17                   resolution of the controversy;

18                   “(ii) the amount of the attorneys’ fees  
19                   otherwise authorized to be awarded unrea-  
20                   sonably exceeds the hourly rate prevailing  
21                   in the community for similar services by  
22                   attorneys of reasonably comparable skill,  
23                   reputation, and experience;

1                   “(iii) the time spent and legal services  
 2                   furnished were excessive considering the  
 3                   nature of the action or proceeding; or

4                   “(iv) the attorney representing the  
 5                   parent did not provide to the local edu-  
 6                   cational agency the appropriate informa-  
 7                   tion in the notice of the complaint de-  
 8                   scribed in subsection (b)(7)(A),  
 9                   the court shall reduce, accordingly, the amount  
 10                  of the attorneys’ fees awarded under this sec-  
 11                  tion.

12                  “(G) EXCEPTION TO REDUCTION IN  
 13                  AMOUNT OF ATTORNEYS’ FEES.—The provi-  
 14                  sions of subparagraph (F) shall not apply in  
 15                  any action or proceeding if the court finds that  
 16                  the State or local educational agency unreason-  
 17                  ably protracted the final resolution of the action  
 18                  or proceeding or there was a violation of this  
 19                  section.

20                  “(j) MAINTENANCE OF CURRENT EDUCATIONAL  
 21                  PLACEMENT.—Except as provided in subsection (k)(4),  
 22                  during the pendency of any proceedings conducted pursu-  
 23                  ant to this section, unless the State or local educational  
 24                  agency and the parents otherwise agree, the child shall  
 25                  remain in the then-current educational placement of such



1 child, or, if applying for initial admission to a public  
2 school, shall, with the consent of the parents, be placed  
3 in the public school program until all such proceedings  
4 have been completed.

5 “(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL  
6 SETTING.—

7 “(1) AUTHORITY OF SCHOOL PERSONNEL.—

8 “(A) IN GENERAL.—School personnel  
9 under this section may order a change in the  
10 placement of a child with a disability who vio-  
11 lates a code of student conduct to an appro-  
12 priate interim alternative educational setting,  
13 another setting, or suspension, for not more  
14 than 10 school days (to the extent such alter-  
15 natives are applied to children without disabil-  
16 ities).

17 “(B) ADDITIONAL AUTHORITY.—If school  
18 personnel seek to order a change in placement  
19 that would exceed 10 school days and the be-  
20 havior that gave rise to the violation of the  
21 school code is determined not to be a manifesta-  
22 tion of the child’s disability pursuant to sub-  
23 paragraph (C), the relevant disciplinary proce-  
24 dures applicable to children without disabilities  
25 may be applied to the child in the same manner

1 in which the procedures would be applied to  
 2 children without disabilities, except as provided  
 3 in section 612(a)(1).

4 “(C) MANIFESTATION DETERMINATION.—

5 “(i) IN GENERAL.—Except as pro-  
 6 vided in subparagraphs (A) and (D), with-  
 7 in 10 school days of any decision to change  
 8 the placement of a child with a disability  
 9 because of a violation of a code of student  
 10 conduct, the IEP Team shall review all rel-  
 11 evant information in the student’s file, any  
 12 information provided by the parents, and  
 13 teacher observations, to determine—

14 “(I) if the conduct in question  
 15 was the result of the child’s disability;  
 16 or

17 “(II) if the conduct in question  
 18 resulted from the failure to implement  
 19 the IEP or develop and implement be-  
 20 havioral interventions as required by  
 21 section 614(d)(3)(B)(i).

22 “(ii) MANIFESTATION.—If the IEP  
 23 Team determines that either subclause (I)  
 24 or (II) of clause (i) is applicable for the

1 child, the conduct shall be determined to  
2 be a manifestation of the child's disability.

3 “(D) SPECIAL CIRCUMSTANCES.—In cases  
4 where a child carries or possesses a weapon at  
5 school or a school function, possesses or uses  
6 drugs or sells or solicits the sale of drugs while  
7 at school or a school function, or has committed  
8 serious bodily injury upon another person while  
9 at school or at a school function, school per-  
10 sonnel may remove a student to an interim al-  
11 ternative educational setting for not more than  
12 45 school days, without regard to whether the  
13 behavior is determined to be a manifestation of  
14 the child's disability.

15 “(E) SERVICES.—A child with a disability  
16 who is removed from the child's current place-  
17 ment under subparagraph (B) or (D) shall—

18 “(i) continue to receive educational  
19 services pursuant to section 612(a)(1), so  
20 as to enable the child to continue to par-  
21 ticipate in the general education cur-  
22 riculum, although in another setting, and  
23 to progress toward meeting the goals set  
24 out in the child's IEP; and

1                   “(ii) receive behavioral intervention  
2                   services as described in section  
3                   614(d)(3)(B)(i) designed to address the be-  
4                   havior violation so that the violation does  
5                   not recur.

6                   “(2) DETERMINATION OF SETTING.—The alter-  
7                   native educational setting shall be determined by the  
8                   IEP Team.

9                   “(3) APPEAL.—

10                   “(A) IN GENERAL.—The parent of a child  
11                   with a disability who disagrees with any deci-  
12                   sion regarding disciplinary action, placement, or  
13                   the manifestation determination under this sub-  
14                   section may request a hearing.

15                   “(B) AUTHORITY OF HEARING OFFICER.—

16                   “(i) IN GENERAL.—If a parent of a  
17                   child with a disability disagrees with a de-  
18                   cision as described in subparagraph (A),  
19                   the hearing officer may determine whether  
20                   the decision regarding such action was ap-  
21                   propriate.

22                   “(ii) CHANGE OF PLACEMENT  
23                   ORDER.—A hearing officer under this sec-  
24                   tion may order a change in placement of a  
25                   child with a disability to an appropriate in-

1            interim alternative educational setting for  
 2            not more than 45 school days if the hear-  
 3            ing officer determines that maintaining the  
 4            current placement of such child is substan-  
 5            tially likely to result in injury to the child  
 6            or to others.

7            “(4) PLACEMENT DURING APPEALS.—When a  
 8            parent requests a hearing regarding a disciplinary  
 9            procedure described in paragraph (1)(B) or chal-  
 10          lenges the interim alternative educational setting or  
 11          manifestation determination—

12            “(A) the child shall remain in the interim  
 13            alternative educational setting pending the deci-  
 14            sion of the hearing officer or until the expira-  
 15            tion of the time period provided for in para-  
 16            graph (1)(B), whichever occurs first, unless the  
 17            parent and the State or local educational agen-  
 18            cy agree otherwise; and

19            “(B) the State or local educational agency  
 20            shall arrange for an expedited hearing which  
 21            shall occur within 20 school days of the date  
 22            the hearing is requested.

23            “(5) PROTECTIONS FOR CHILDREN NOT YET  
 24            ELIGIBLE FOR SPECIAL EDUCATION AND RELATED  
 25            SERVICES.—

1           “(A) IN GENERAL.—A child who has not  
2           been determined to be eligible for special edu-  
3           cation and related services under this part and  
4           who has engaged in behavior that violates a  
5           code of student conduct, may assert any of the  
6           protections provided for in this part if the local  
7           educational agency had knowledge (as deter-  
8           mined in accordance with this paragraph) that  
9           the child was a child with a disability before the  
10          behavior that precipitated the disciplinary ac-  
11          tion occurred.

12          “(B) BASIS OF KNOWLEDGE.—A local edu-  
13          cational agency shall be deemed to have knowl-  
14          edge that a child is a child with a disability if,  
15          before the behavior that precipitated the dis-  
16          ciplinary action occurred—

17               “(i) the parent of the child has ex-  
18               pressed concern in writing (unless the par-  
19               ent is illiterate or has a disability that pre-  
20               vents compliance with the requirements  
21               contained in this clause) to personnel of  
22               the appropriate educational agency that  
23               the child is in need of special education  
24               and related services;

1 “(ii) the parent of the child has re-  
2 quested an evaluation of the child pursuant  
3 to section 614;

4 “(iii) the teacher of the child, or other  
5 personnel of the local educational agency,  
6 has expressed concern about a pattern of  
7 behavior demonstrated by the child, to the  
8 director of special education of such agen-  
9 cy or to other administrative personnel of  
10 the agency; or

11 “(iv) the child has engaged in a pat-  
12 tern of behavior that should have alerted  
13 personnel of the local educational agency  
14 that the child may be in need of special  
15 education and related services.

16 “(C) EXCEPTION.—A local educational  
17 agency shall not be deemed to have knowledge  
18 that the child has a disability if the parent of  
19 the child has not agreed to allow an evaluation  
20 of the child pursuant to section 614.

21 “(D) CONDITIONS THAT APPLY IF NO  
22 BASIS OF KNOWLEDGE.—

23 “(i) IN GENERAL.—If a local edu-  
24 cational agency does not have knowledge  
25 that a child is a child with a disability (in

1 accordance with subparagraph (B) or (C))  
2 prior to taking disciplinary measures  
3 against the child, the child may be sub-  
4 jected to disciplinary measures applied to  
5 children without disabilities who engaged  
6 in comparable behaviors consistent with  
7 clause (ii).

8 “(ii) LIMITATIONS.—If a request is  
9 made for an evaluation of a child during  
10 the time period in which the child is sub-  
11 jected to disciplinary measures under para-  
12 graph (1), the evaluation shall be con-  
13 ducted in an expedited manner. If the child  
14 is determined to be a child with a dis-  
15 ability, taking into consideration informa-  
16 tion from the evaluation conducted by the  
17 agency and information provided by the  
18 parents, the agency shall provide special  
19 education and related services in accord-  
20 ance with this part, except that, pending  
21 the results of the evaluation, the child shall  
22 remain in the educational placement deter-  
23 mined by school authorities.

24 “(6) REFERRAL TO AND ACTION BY LAW EN-  
25 FORCEMENT AND JUDICIAL AUTHORITIES.—



1           “(A) CONSTRUCTION.—Nothing in this  
2 part shall be construed to prohibit an agency  
3 from reporting a crime committed by a child  
4 with a disability to appropriate authorities or to  
5 prevent State law enforcement and judicial au-  
6 thorities from exercising their responsibilities  
7 with regard to the application of Federal and  
8 State law to crimes committed by a child with  
9 a disability.

10           “(B) TRANSMITTAL OF RECORDS.—An  
11 agency reporting a crime committed by a child  
12 with a disability shall ensure that copies of the  
13 special education and disciplinary records of the  
14 child are transmitted for consideration by the  
15 appropriate authorities to whom the agency re-  
16 ports the crime.

17           “(7) DEFINITIONS.—For purposes of this sub-  
18 section, the following definitions apply:

19           “(A) DRUG.—The term ‘drug’—

20           “(i) means a drug or other substance  
21 identified under schedules I, II, III, IV, or  
22 V in section 202(c) of the Controlled Sub-  
23 stances Act (21 U.S.C. 812(c)); and

24           “(ii) does not include such a sub-  
25 stance that is legally possessed or used

1 under the supervision of a licensed health-  
2 care professional or that is legally pos-  
3 sessed or used under any other authority  
4 under that Act or under any other provi-  
5 sion of Federal law.

6 “(B) WEAPON.—The term ‘weapon’ has  
7 the meaning given the term ‘dangerous weapon’  
8 under section 930(g)(2) of title 18, United  
9 States Code.

10 “(C) SERIOUS BODILY INJURY.—The term  
11 ‘serious bodily injury’ has the meaning given  
12 the term ‘serious bodily injury’ under para-  
13 graph (3) of subsection (h) of section 1365 of  
14 title 18, United States Code.

15 “(I) RULE OF CONSTRUCTION.—Nothing in this title  
16 shall be construed to restrict or limit the rights, proce-  
17 dures, and remedies available under the Constitution, the  
18 Americans with Disabilities Act of 1990, title V of the Re-  
19 habilitation Act of 1973, or other Federal laws protecting  
20 the rights of children with disabilities, except that before  
21 the filing of a civil action under such laws seeking relief  
22 that is also available under this part, the procedures under  
23 subsections (f) and (g) shall be exhausted to the same ex-  
24 tent as would be required had the action been brought  
25 under this part.

1       “(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF  
2 MAJORITY.—

3           “(1) IN GENERAL.—A State that receives  
4 amounts from a grant under this part may provide  
5 that, when a child with a disability reaches the age  
6 of majority under State law (except for a child with  
7 a disability who has been determined to be incom-  
8 petent under State law)—

9           “(A) the public agency shall provide any  
10 notice required by this section to both the indi-  
11 vidual and the parents;

12           “(B) all other rights accorded to parents  
13 under this part transfer to the child;

14           “(C) the agency shall notify the individual  
15 and the parents of the transfer of rights; and

16           “(D) all rights accorded to parents under  
17 this part transfer to children who are incarcer-  
18 ated in an adult or juvenile Federal, State, or  
19 local correctional institution.

20           “(2) SPECIAL RULE.—If, under State law, a  
21 child with a disability who has reached the age of  
22 majority under State law, who has not been deter-  
23 mined to be incompetent, but who is determined not  
24 to have the ability to provide informed consent with  
25 respect to the educational program of the child, the

1 State shall establish procedures for appointing the  
 2 parent of the child, or if the parent is not available,  
 3 another appropriate individual, to represent the edu-  
 4 cational interests of the child throughout the period  
 5 of eligibility of the child under this part.

6 **“SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND EN-**  
 7 **FORCEMENT.**

8 “(a) FEDERAL AND STATE MONITORING.—

9 “(1) IN GENERAL.—The Secretary shall—

10 “(A) monitor implementation of this Act  
 11 through—

12 “(i) oversight of the States’ exercise  
 13 of general supervision, as required in sec-  
 14 tion 612(a)(11); and

15 “(ii) the system of indicators, de-  
 16 scribed in subsection (b)(2);

17 “(B) enforce this Act in accordance with  
 18 subsection (c); and

19 “(C) require States to monitor implemen-  
 20 tation of this Act by local educational agencies  
 21 and enforce this Act in accordance with para-  
 22 graph (3) of this subsection and subsection (c).

23 “(2) FOCUSED MONITORING.—The primary  
 24 focus of Federal and State monitoring activities de-  
 25 scribed in paragraph (1) shall be on improving edu-

1 cational results and functional outcomes for all chil-  
2 dren with disabilities, while ensuring compliance  
3 with program requirements, with a particular em-  
4 phasis on those requirements that are most closely  
5 related to improving educational results for children  
6 with disabilities.

7 “(3) MONITORING PRIORITIES.—The Secretary  
8 shall monitor, and shall require States to monitor,  
9 the following priority areas:

10 “(A) Provision of a free appropriate public  
11 education in the least restrictive environment.

12 “(B) Provision of transition services, as  
13 defined in section 602(32).

14 “(C) State exercise of general supervisory  
15 authority, including the effective use of com-  
16 plaint resolution and mediation.

17 “(D) Overrepresentation of racial and eth-  
18 nic groups in special education and related serv-  
19 ices, to the extent the overrepresentation is the  
20 result of inappropriate policies, procedures, and  
21 practices.

22 “(4) PERMISSIVE AREAS OF REVIEW.—The Sec-  
23 retary may examine other relevant information and  
24 data, including data provided by States under sec-

tion 618, and data from the State’s compliance plan under subsection (b)(2)(C).

“(b) INDICATORS.—

“(1) SYSTEM.—The Secretary shall implement and administer a system of required indicators as described in paragraph (2) that measures the progress of States in improving their performance under this Act.

“(2) INDICATORS.—

“(A) IN GENERAL.—Using the performance indicators established by States under section 612(a)(15), the Secretary shall review—

“(i) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, which for purposes of this paragraph means the number and percentage of students with disabilities who graduate with a regular diploma within the number of years specified in a student’s IEP; and

“(ii) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, as compared

1 to the performance and rates for all chil-  
 2 dren.

3 “(B) SECRETARY’S ASSESSMENT.—Based  
 4 on that review and a review of the State’s com-  
 5 pliance plan under subparagraph (C), the Sec-  
 6 retary shall assess the State’s progress in im-  
 7 proving educational results for children with  
 8 disabilities.

9 “(C) STATE COMPLIANCE PLAN.—Not  
 10 later than 1 year after the date of the enact-  
 11 ment of the Individuals with Disabilities Edu-  
 12 cation Improvement Act of 2003, each State  
 13 shall have in place a compliance plan developed  
 14 in collaboration with the Secretary. Each  
 15 State’s compliance plan shall—

16 “(i) include benchmarks to measure  
 17 continuous progress on the priority areas  
 18 described in subsection (a)(3);

19 “(ii) describe strategies the State will  
 20 use to achieve the benchmarks; and

21 “(iii) be approved by the Secretary.

22 “(3) DATA COLLECTION AND ANALYSIS.—The  
 23 Secretary shall—

24 “(A) review the data collection and anal-  
 25 ysis capacity of States to ensure that data and

1 information determined necessary for implemen-  
2 tation of this subsection is collected, analyzed,  
3 and accurately reported to the Secretary; and

4 “(B) provide technical assistance to im-  
5 prove the capacity of States to meet these data  
6 collection requirements.

7 “(c) COMPLIANCE AND ENFORCEMENT.—

8 “(1) IN GENERAL.—The Secretary shall exam-  
9 ine relevant State information and data annually, to  
10 determine whether the State is making satisfactory  
11 progress toward improving educational results for  
12 children with disabilities using the indicators de-  
13 scribed in subsection (b)(2)(A) and the benchmarks  
14 established in the State compliance plan under sub-  
15 section (b)(2)(C), and is in compliance with the pro-  
16 visions of this Act.

17 “(2) LACK OF SATISFACTORY PROGRESS BY A  
18 STATE.—

19 “(A) IN GENERAL.—If after examining  
20 data, as provided in subsection (b)(2) (A) and  
21 (C), the Secretary determines that a State  
22 failed to make satisfactory progress in meeting  
23 the indicators described in subsection (b)(2)(A)  
24 or has failed to meet the benchmarks described  
25 in subsection (b)(2)(C) for 2 consecutive years



1 after the State has developed its compliance  
2 plan, the Secretary shall notify the State that  
3 the State has failed to make satisfactory  
4 progress, and shall take 1 or more of the fol-  
5 lowing actions:

6 “(i) Direct the use of State level  
7 funds for technical assistance, services, or  
8 other expenditures to ensure that the State  
9 resolves the area or areas of unsatisfactory  
10 progress.

11 “(ii) Withhold not less than 20, but  
12 not more than 50, percent of the State’s  
13 funds for State administration and activi-  
14 ties for the fiscal year under section  
15 611(e), after providing the State the op-  
16 portunity to show cause why the with-  
17 holding should not occur, until the Sec-  
18 retary determines that sufficient progress  
19 has been made in improving educational  
20 results for children with disabilities.

21 “(B) ADDITIONAL SECRETARIAL AC-  
22 TION.—If, at the end of the 5th year after the  
23 Secretary has approved the compliance plan  
24 that the State has developed under subsection  
25 (b)(2)(C), the Secretary determines that a

1 State failed to meet the benchmarks in the  
2 State compliance plan and make satisfactory  
3 progress in improving educational results for  
4 children with disabilities pursuant to the indica-  
5 tors described in subsection (b)(2)(A), the Sec-  
6 retary shall take 1 or more of the following ac-  
7 tions:

8 “(i) Seek to recover funds under sec-  
9 tion 452 of the General Education Provi-  
10 sions Act.

11 “(ii) After providing reasonable notice  
12 and an opportunity for a hearing to the  
13 State educational agency involved, with-  
14 hold, in whole or in part, any further pay-  
15 ments to the State under this part pursu-  
16 ant to subsection (c)(5).

17 “(iii) After providing reasonable no-  
18 tice and an opportunity for a hearing to  
19 the State educational agency involved,  
20 refer the matter for appropriate enforce-  
21 ment action, which may include referral to  
22 the Department of Justice.

23 “(iv) Pending the outcome of any  
24 hearing to withhold payments under clause  
25 (ii), the Secretary may suspend payments

1 to a recipient, suspend the authority of the  
2 recipient to obligate Federal funds, or  
3 both, after such recipient has been given  
4 reasonable notice and an opportunity to  
5 show cause why future payments or au-  
6 thority to obligate Federal funds should  
7 not be suspended.

8 “(C) SUBSTANTIAL NONCOMPLIANCE.—

9 Notwithstanding subparagraph (B), at any time  
10 that the Secretary determines that a State is  
11 not in substantial compliance with any provision  
12 of this part or that there is a substantial failure  
13 to comply with any condition of a local agency’s  
14 or State agency’s eligibility under this part, the  
15 Secretary shall take 1 or more of the following  
16 actions:

17 “(i) Request that the State prepare a  
18 corrective action plan or improvement plan  
19 if the Secretary determines that the State  
20 should be able to correct the problem with-  
21 in 1 year.

22 “(ii) Identify the State as a high-risk  
23 grantee and impose special conditions on  
24 the State’s grant under this part.

1           “(iii) Require the State to enter into  
2           a compliance agreement under section 457  
3           of the General Education Provisions Act, if  
4           the Secretary has reason to believe that  
5           the State cannot correct the problem with-  
6           in 1 year.

7           “(iv) Recovery of funds under section  
8           452 of the General Education Provisions  
9           Act.

10          “(v) After providing reasonable notice  
11          and an opportunity for a hearing to the  
12          State educational agency involved, with-  
13          hold, in whole or in part, any further pay-  
14          ments to the State under this part.

15          “(vi) After providing reasonable notice  
16          and an opportunity for a hearing to the  
17          State educational agency involved, refer  
18          the matter for appropriate enforcement ac-  
19          tion, which may include referral to the De-  
20          partment of Justice.

21          “(vii) Pending the outcome of any  
22          hearing to withhold payments under clause  
23          (v), the Secretary may suspend payments  
24          to a recipient, suspend the authority of the  
25          recipient to obligate Federal funds, or

1           both, after such recipient has been given  
2           reasonable notice and an opportunity to  
3           show cause why future payments or au-  
4           thority to obligate Federal funds should  
5           not be suspended.

6           “(3) EGREGIOUS NONCOMPLIANCE.—At any  
7           time that the Secretary determines that a State is  
8           in egregious noncompliance or is willfully dis-  
9           regarding the provisions of this Act, the Secretary  
10          shall take such additional enforcement actions as the  
11          Secretary determines to be appropriate from among  
12          those actions specified in paragraph (2)(C), and, ad-  
13          ditionally, may impose 1 or more of the following  
14          sanctions upon that State:

15               “(A) Institute a cease and desist action  
16               under section 456 of the General Education  
17               Provisions Act.

18               “(B) Refer the case to the Office of the In-  
19               specter General.

20           “(4) REPORT TO CONGRESS.—The Secretary  
21          shall report to Congress within 30 days of taking en-  
22          forcement action pursuant to paragraph (2) (B) or  
23          (C), or (3), on the specific action taken and the rea-  
24          sons why enforcement action was taken.

1           “(5) NATURE OF WITHHOLDING.—If the Sec-  
2       retary withholds further payments under paragraphs  
3       (2)(B)(ii) and (2)(C)(v), the Secretary may deter-  
4       mine that such withholding will be limited to pro-  
5       grams or projects, or portions thereof, affected by  
6       the failure, or that the State educational agency  
7       shall not make further payments under this part to  
8       specified local educational agencies or State agencies  
9       affected by the failure. Until the Secretary is satis-  
10      fied that there is no longer any failure to make sat-  
11      isfactory progress as specified in paragraph (2)(B),  
12      or to comply with the provisions of this part, as  
13      specified in paragraph (2)(C), payments to the State  
14      under this part shall be withheld in whole or in part,  
15      or payments by the State educational agency under  
16      this part shall be limited to local educational agen-  
17      cies and State agencies whose actions did not cause  
18      or were not involved in the failure, as the case may  
19      be. Any State educational agency, State agency, or  
20      local educational agency that has received notice  
21      under paragraph (2)(B) or (2)(C) shall, by means of  
22      a public notice, take such measures as may be nec-  
23      essary to bring the pendency of an action pursuant  
24      to this subsection to the attention of the public with-  
25      in the jurisdiction of such agency.

1 “(6) JUDICIAL REVIEW.—

2 “(A) IN GENERAL.—If any State is dissat-  
3 isfied with the Secretary’s final action with re-  
4 spect to the eligibility of the State under section  
5 612, such State may, not later than 60 days  
6 after notice of such action, file with the United  
7 States court of appeals for the circuit in which  
8 such State is located a petition for review of  
9 that action. A copy of the petition shall be  
10 forthwith transmitted by the clerk of the court  
11 to the Secretary. The Secretary thereupon shall  
12 file in the court the record of the proceedings  
13 upon which the Secretary’s action was based, as  
14 provided in section 2112 of title 28, United  
15 States Code.

16 “(B) JURISDICTION; REVIEW BY UNITED  
17 STATES SUPREME COURT.—Upon the filing of  
18 such petition, the court shall have jurisdiction  
19 to affirm the action of the Secretary or to set  
20 it aside, in whole or in part. The judgment of  
21 the court shall be subject to review by the Su-  
22 preme Court of the United States upon certio-  
23 rari or certification as provided in section 1254  
24 of title 28, United States Code.

1           “(C) STANDARD OF REVIEW.—The find-  
2           ings of fact by the Secretary, if supported by  
3           substantial evidence, shall be conclusive, but the  
4           court, for good cause shown, may remand the  
5           case to the Secretary to take further evidence,  
6           and the Secretary may thereupon make new or  
7           modified findings of fact and may modify the  
8           Secretary’s previous action, and shall file in the  
9           court the record of the further proceedings.  
10          Such new or modified findings of fact shall like-  
11          wise be conclusive if supported by substantial  
12          evidence.

13          “(d) DIVIDED STATE AGENCY RESPONSIBILITY.—  
14          For purposes of this section, where responsibility for en-  
15          suring that the requirements of this part are met with re-  
16          spect to children with disabilities who are convicted as  
17          adults under State law and incarcerated in adult prisons  
18          is assigned to a public agency other than the State edu-  
19          cational agency pursuant to section 612(a)(11)(C), the  
20          Secretary, in instances where the Secretary finds that the  
21          failure to comply substantially with the provisions of this  
22          part are related to a failure by the public agency, shall  
23          take appropriate corrective action to ensure compliance  
24          with this part, except that—



1           “(1) any reduction or withholding of payments  
2           to the State shall be proportionate to the total funds  
3           allotted under section 611 to the State as the num-  
4           ber of eligible children with disabilities in adult pris-  
5           ons under the supervision of the other public agency  
6           is proportionate to the number of eligible individuals  
7           with disabilities in the State under the supervision  
8           of the State educational agency; and

9           “(2) any withholding of funds under paragraph  
10          (1) shall be limited to the specific agency responsible  
11          for the failure to comply with this part.

12          “(e) STATE AND LOCAL MONITORING.—

13                 “(1) IN GENERAL.—The State educational  
14                 agency shall monitor and enforce implementation of  
15                 this Act, implement a system of monitoring the  
16                 benchmarks in the State’s compliance plan under  
17                 subsection (b)(2)(C), and require local educational  
18                 agencies to monitor and enforce implementation of  
19                 this Act.

20                 “(2) ADDITIONAL ENFORCEMENT OPTIONS.—If  
21                 a State educational agency determines that a local  
22                 educational agency is not meeting the requirements  
23                 of this part, including the benchmarks in the State’s  
24                 compliance plan, the State educational agency shall  
25                 prohibit the local educational agency from treating

1 funds received under this part as local funds under  
2 section 613(a)(2)(C) for any fiscal year.

3 **“SEC. 617. ADMINISTRATION.**

4 “(a) RESPONSIBILITIES OF SECRETARY.—The Sec-  
5 retary shall—

6 “(1) cooperate with, and (directly or by grant  
7 or contract) furnish technical assistance necessary  
8 to, a State in matters relating to—

9 “(A) the education of children with disabil-  
10 ities; and

11 “(B) carrying out this part; and

12 “(2) provide short-term training programs and  
13 institutes.

14 “(b) RULES AND REGULATIONS.—In carrying out  
15 the provisions of this part, the Secretary shall issue regu-  
16 lations under this Act only to the extent that such regula-  
17 tions are necessary to ensure that there is compliance with  
18 the specific requirements of this Act.

19 “(c) CONFIDENTIALITY.—The Secretary shall take  
20 appropriate action, in accordance with section 444 of the  
21 General Education Provisions Act (20 U.S.C. 1232g), to  
22 assure the protection of the confidentiality of any person-  
23 ally identifiable data, information, and records collected  
24 or maintained by the Secretary and by State and local  
25 educational agencies pursuant to this part.

1       “(d) PERSONNEL.—The Secretary is authorized to  
2 hire qualified personnel necessary to carry out the Sec-  
3 retary’s duties under subsection (a) and under sections  
4 618, 661, and 664, without regard to the provisions of  
5 title 5, United States Code, relating to appointments in  
6 the competitive service and without regard to chapter 51  
7 and subchapter III of chapter 53 of such title relating to  
8 classification and general schedule pay rates, except that  
9 not more than 20 such personnel shall be employed at any  
10 1 time.

11       “(e) MODEL FORMS.—Not later than the date that  
12 the Secretary publishes final regulations under this Act,  
13 to implement amendments made by the Individuals with  
14 Disabilities Education Improvement Act of 2003, the Sec-  
15 retary shall publish and disseminate widely to States, local  
16 educational agencies, and parent and community training  
17 and information centers—

18               “(1) a model IEP form;

19               “(2) a model form of the notice of procedural  
20 safeguards described in section 615(d); and

21               “(3) a model form of the prior written notice  
22 described in section 615 (b)(3) and (c)(1) that is  
23 consistent with the requirements of this part and is  
24 sufficient to meet such requirements.

1 **“SEC. 618. PROGRAM INFORMATION.**

2 “(a) IN GENERAL.—Each State that receives assist-  
3 ance under this part, and the Secretary of the Interior,  
4 shall provide data each year to the Secretary of Education  
5 on—

6 “(1)(A)—the number and percentage of chil-  
7 dren with disabilities, by race, ethnicity, limited  
8 English proficiency status, and disability category,  
9 who are receiving a free appropriate public edu-  
10 cation;

11 “(B) the number and percentage of children  
12 with disabilities, by race, ethnicity, and limited  
13 English proficiency status who are receiving early  
14 intervention services;

15 “(C) the number and percentage of children  
16 with disabilities, by race, ethnicity, limited English  
17 proficiency status, and disability category, who are  
18 participating in regular education;

19 “(D) the number and percentage of children  
20 with disabilities, by race, ethnicity, limited English  
21 proficiency status, and disability category, who are  
22 in separate classes, separate schools or facilities, or  
23 public or private residential facilities;

24 “(E) the number and percentage of children  
25 with disabilities, by race, ethnicity, limited English  
26 proficiency status, and disability category, who, for

1 each year of age from age 14 through 21, stopped  
2 receiving special education and related services be-  
3 cause of program completion or other reasons, and  
4 the reasons why those children stopped receiving  
5 special education and related services;

6 “(F) the number and percentage of children  
7 with disabilities, by race, and ethnicity, who, from  
8 birth through age 2, stopped receiving early inter-  
9 vention services because of program completion or  
10 for other reasons;

11 “(G)(i) the number and percentage of children  
12 with disabilities, by race, ethnicity, limited English  
13 proficiency status, and disability category, who are  
14 removed to an interim alternative educational setting  
15 under section 615(k)(1);

16 “(ii) the acts or items precipitating those re-  
17 movals; and

18 “(iii) the number of children with disabilities  
19 who are subject to long-term suspensions or expul-  
20 sions;

21 “(H) the incidence and duration of disciplinary  
22 actions by race, ethnicity, limited English proficiency  
23 status, and disability category, of children with dis-  
24 abilities, including suspensions of 1 day or more;

1           “(I) the number and percentage of children  
2           with disabilities who are removed to alternative edu-  
3           cational settings or expelled as compared to children  
4           without disabilities who are removed to alternative  
5           educational settings or expelled;

6           “(J) the number of due process complaints filed  
7           under section 615 and the number of hearings con-  
8           ducted;

9           “(K) the number of hearings requested under  
10          section 615(k) and the number of changes in place-  
11          ments ordered as a result of those hearings;

12          “(L) the number of hearings requested under  
13          section 615(k)(3)(B) and the number of changes in  
14          placements ordered as a result of those hearings;  
15          and

16          “(M) the number of mediations held and the  
17          number of settlement agreements reached through  
18          such mediations;

19          “(2) the number and percentage of infants and  
20          toddlers, by race, and ethnicity, who are at risk of  
21          having substantial developmental delays (as defined  
22          in section 632), and who are receiving early inter-  
23          vention services under part C; and

24          “(3) any other information that may be re-  
25          quired by the Secretary.

1       “(b) TECHNICAL ASSISTANCE.—The Secretary may  
2 provide technical assistance to States to ensure compliance  
3 with the data collection and reporting requirements under  
4 this Act.

5       “(c) DISPROPORTIONALITY.—

6           “(1) IN GENERAL.—Each State that receives  
7 assistance under this part, and the Secretary of the  
8 Interior, shall provide for the collection and exam-  
9 ination of data to determine if significant  
10 disproportionality based on race is occurring in the  
11 State with respect to—

12           “(A) the identification of children as chil-  
13 dren with disabilities, including the identifica-  
14 tion of children as children with disabilities in  
15 accordance with a particular impairment de-  
16 scribed in section 602(3);

17           “(B) the placement in particular edu-  
18 cational settings of such children; and

19           “(C) the incidence, duration, and type of  
20 disciplinary actions, including suspensions and  
21 expulsions.

22       “(2) REVIEW AND REVISION OF POLICIES,  
23 PRACTICES, AND PROCEDURES.—In the case of a de-  
24 termination of significant disproportionality with re-  
25 spect to the identification of children as children

1 with disabilities, or the placement in particular edu-  
2 cational settings of such children, in accordance with  
3 paragraph (1), the State or the Secretary of the In-  
4 terior, as the case may be, shall provide for the re-  
5 view and, if appropriate, revision of the policies, pro-  
6 cedures, and practices used in such identification or  
7 placement to ensure that such policies, procedures,  
8 and practices comply with the requirements of this  
9 Act.

10 **“SEC. 619. PRESCHOOL GRANTS.**

11 “(a) IN GENERAL.—The Secretary shall provide  
12 grants under this section to assist States to provide special  
13 education and related services, in accordance with this  
14 part—

15 “(1) to children with disabilities aged 3 through  
16 5, inclusive; and

17 “(2) at the State’s discretion, to 2-year-old chil-  
18 dren with disabilities who will turn 3 during the  
19 school year.

20 “(b) ELIGIBILITY.—A State shall be eligible for a  
21 grant under this section if such State—

22 “(1) is eligible under section 612 to receive a  
23 grant under this part; and



1           “(2) makes a free appropriate public education  
2           available to all children with disabilities, aged 3  
3           through 5, residing in the State.

4           “(c) ALLOCATIONS TO STATES.—

5           “(1) IN GENERAL.—The Secretary shall allo-  
6           cate the amount made available to carry out this  
7           section for a fiscal year among the States in accord-  
8           ance with paragraph (2) or (3), as the case may be.

9           “(2) INCREASE IN FUNDS.—If the amount  
10          available for allocations to States under paragraph  
11          (1) is equal to or greater than the amount allocated  
12          to the States under this section for the preceding  
13          fiscal year, those allocations shall be calculated as  
14          follows:

15               “(A) ALLOCATION.—

16                   “(i) IN GENERAL.—Except as pro-  
17                   vided in subparagraph (B), the Secretary  
18                   shall—

19                               “(I) allocate to each State the  
20                               amount the State received under this  
21                               section for fiscal year 1997;

22                               “(II) allocate 85 percent of any  
23                               remaining funds to States on the  
24                               basis of the States’ relative popu-

1                   lations of children aged 3 through 5;  
2                   and

3                   “(III) allocate 15 percent of  
4                   those remaining funds to States on  
5                   the basis of the States’ relative popu-  
6                   lations of all children aged 3 through  
7                   5 who are living in poverty.

8                   “(ii) DATA.—For the purpose of mak-  
9                   ing grants under this paragraph, the Sec-  
10                  retary shall use the most recent population  
11                  data, including data on children living in  
12                  poverty, that are available and satisfactory  
13                  to the Secretary.

14                  “(B) LIMITATIONS.—Notwithstanding sub-  
15                  paragraph (A), allocations under this paragraph  
16                  shall be subject to the following:

17                  “(i) PRECEDING YEARS.—No State’s  
18                  allocation shall be less than its allocation  
19                  under this section for the preceding fiscal  
20                  year.

21                  “(ii) MINIMUM.—No State’s allocation  
22                  shall be less than the greatest of—

23                         “(I) the sum of—

1           “(aa) the amount the State  
2 received under this section for  
3 fiscal year 1997; and

4           “(bb)  $\frac{1}{3}$  of 1 percent of the  
5 amount by which the amount ap-  
6 propriated under subsection (j)  
7 for the fiscal year exceeds the  
8 amount appropriated for this sec-  
9 tion for fiscal year 1997;

10          “(II) the sum of—

11           “(aa) the amount the State  
12 received under this section for  
13 the preceding fiscal year; and

14           “(bb) that amount multi-  
15 plied by the percentage by which  
16 the increase in the funds appro-  
17 priated under this section from  
18 the preceding fiscal year exceeds  
19 1.5 percent; or

20          “(III) the sum of—

21           “(aa) the amount the State  
22 received under this section for  
23 the preceding fiscal year; and

24           “(bb) that amount multi-  
25 plied by 90 percent of the per-

1                   centage increase in the amount  
2                   appropriated under this section  
3                   from the preceding fiscal year.

4                   “(iii)     MAXIMUM.—Notwithstanding  
5                   clause (ii), no State’s allocation under this  
6                   paragraph shall exceed the sum of—

7                   “(I) the amount the State re-  
8                   ceived under this section for the pre-  
9                   ceding fiscal year; and

10                  “(II) that amount multiplied by  
11                  the sum of 1.5 percent and the per-  
12                  centage increase in the amount appro-  
13                  priated under this section from the  
14                  preceding fiscal year.

15                  “(C)     RATABLE     REDUCTIONS.—If the  
16                  amount available for allocations under this  
17                  paragraph is insufficient to pay those alloca-  
18                  tions in full, those allocations shall be ratably  
19                  reduced, subject to subparagraph (B)(i).

20                  “(3)     DECREASE IN FUNDS.—If the amount  
21                  available for allocations to States under paragraph  
22                  (1) is less than the amount allocated to the States  
23                  under this section for the preceding fiscal year, those  
24                  allocations shall be calculated as follows:

1           “(A) ALLOCATIONS.—If the amount avail-  
2           able for allocations is greater than the amount  
3           allocated to the States for fiscal year 1997,  
4           each State shall be allocated the sum of—

5                   “(i) the amount the State received  
6                   under this section for fiscal year 1997; and

7                   “(ii) an amount that bears the same  
8                   relation to any remaining funds as the in-  
9                   crease the State received under this section  
10                  for the preceding fiscal year over fiscal  
11                  year 1997 bears to the total of all such in-  
12                  creases for all States.

13           “(B) If the amount available for alloca-  
14           tions under this paragraph is equal to or less  
15           than the amount allocated under this section to  
16           the States for fiscal year 1997, each State shall  
17           be allocated the amount the State received for  
18           that year, ratably reduced, if necessary.

19           “(d) RESERVATION FOR STATE ACTIVITIES.—

20                   “(1) IN GENERAL.—Each State may reserve  
21           not more than the amount described in paragraph  
22           (2) for administration and other State-level activities  
23           in accordance with subsections (e) and (f).

24                   “(2) AMOUNT DESCRIBED.—For each fiscal  
25           year, the Secretary shall determine and report to the

1 State educational agency an amount that is 25 per-  
2 cent of the amount the State received under this sec-  
3 tion for fiscal year 1997, cumulatively adjusted by  
4 the Secretary for each succeeding fiscal year by the  
5 lesser of—

6 “(A) the percentage increase, if any, from  
7 the preceding fiscal year in the State’s alloca-  
8 tion under this section; or

9 “(B) the percentage increase, if any, from  
10 the preceding fiscal year in the Consumer Price  
11 Index For All Urban Consumers published by  
12 the Bureau of Labor Statistics of the Depart-  
13 ment of Labor.

14 “(e) STATE ADMINISTRATION.—

15 “(1) IN GENERAL.—For the purpose of admin-  
16 istering this section (including the coordination of  
17 activities under this part with, and providing tech-  
18 nical assistance to, other programs that provide  
19 services to children with disabilities) a State may  
20 use not more than 20 percent of the maximum  
21 amount the State may reserve under subsection (d)  
22 for any fiscal year.

23 “(2) ADMINISTRATION OF PART C.—Funds de-  
24 scribed in paragraph (1) may also be used for the  
25 administration of part C of this Act, if the State

1 educational agency is the lead agency for the State  
2 under that part.

3 “(f) OTHER STATE-LEVEL ACTIVITIES.—Each State  
4 shall use any funds the State reserves under subsection  
5 (d) and does not use for administration under subsection  
6 (e)—

7 “(1) for support services (including establishing  
8 and implementing the mediation process required by  
9 section 615(e)), which may benefit children with dis-  
10 abilities younger than 3 or older than 5 as long as  
11 those services also benefit children with disabilities  
12 aged 3 through 5;

13 “(2) for direct services for children eligible for  
14 services under this section;

15 “(3) for activities at the State and local levels  
16 to meet the performance goals established by the  
17 State under section 612(a)(15) and to support im-  
18 plementation of the State plan under subpart 1 of  
19 part D if the State receives funds under that sub-  
20 part; or

21 “(4) to supplement other funds used to develop  
22 and implement a statewide coordinated services sys-  
23 tem designed to improve results for children and  
24 families, including children with disabilities and their  
25 families, but not more than 1 percent of the amount

1 received by the State under this section for a fiscal  
2 year.

3 “(g) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-  
4 CIES.—

5 “(1) SUBGRANTS REQUIRED.—Each State that  
6 receives a grant under this section for any fiscal  
7 year shall distribute all of the grant funds that the  
8 State does not reserve under subsection (d) to local  
9 educational agencies in the State that have estab-  
10 lished their eligibility under section 613, as follows:

11 “(A) BASE PAYMENTS.—The State shall  
12 first award each local educational agency de-  
13 scribed in paragraph (1) the amount that agen-  
14 cy would have received under this section for  
15 fiscal year 1997 if the State had distributed 75  
16 percent of its grant for that year under section  
17 619(c)(3), as such section was then in effect.

18 “(B) ALLOCATION OF REMAINING  
19 FUNDS.—After making allocations under sub-  
20 paragraph (A), the State shall—

21 “(i) allocate 85 percent of any re-  
22 maining funds to those local educational  
23 agencies on the basis of the relative num-  
24 bers of children enrolled in public and pri-  
25 vate elementary schools and secondary



1 schools within the local educational agen-  
2 cy's jurisdiction; and

3 “(ii) allocate 15 percent of those re-  
4 maining funds to those local educational  
5 agencies in accordance with their relative  
6 numbers of children living in poverty, as  
7 determined by the State educational agen-  
8 cy.

9 “(2) REALLOCATION OF FUNDS.—If a State  
10 educational agency determines that a local edu-  
11 cational agency is adequately providing a free appro-  
12 priate public education to all children with disabil-  
13 ities aged 3 through 5 residing in the area served by  
14 that agency with State and local funds, the State  
15 educational agency may reallocate any portion of the  
16 funds under this section that are not needed by that  
17 local educational agency to provide a free appro-  
18 priate public education to other local educational  
19 agencies in the State that are not adequately pro-  
20 viding special education and related services to all  
21 children with disabilities aged 3 through 5 residing  
22 in the areas the other local educational agencies  
23 serve.

24 “(h) PART C INAPPLICABLE.—Part C of this Act  
25 does not apply to any child with a disability receiving a

1 free appropriate public education, in accordance with this  
2 part, with funds received under this section.

3 “(i) DEFINITION.—For the purpose of this section,  
4 the term ‘State’ means each of the 50 States, the District  
5 of Columbia, and the Commonwealth of Puerto Rico.

6 “(j) AUTHORIZATION OF APPROPRIATIONS.—For the  
7 purpose of carrying out this section, there are authorized  
8 to be appropriated to the Secretary such sums as may be  
9 necessary for each of the fiscal years 2004 through 2009.

## 10 **“PART C—INFANTS AND** 11 **TODDLERS WITH DISABILITIES**

### 12 **“SEC. 631. FINDINGS AND POLICY.**

13 “(a) FINDINGS.—Congress finds that there is an ur-  
14 gent and substantial need—

15 “(1) to enhance the development of infants and  
16 toddlers with disabilities, to minimize their potential  
17 for developmental delay, and to recognize the signifi-  
18 cant brain development which occurs during a child’s  
19 first 3 years of life;

20 “(2) to reduce the educational costs to our soci-  
21 ety, including our Nation’s schools, by minimizing  
22 the need for special education and related services  
23 after infants and toddlers with disabilities reach  
24 school age;

1           “(3) to maximize the potential for individuals  
2           with disabilities to live independently in society;

3           “(4) to enhance the capacity of families to meet  
4           the special needs of their infants and toddlers with  
5           disabilities; and

6           “(5) to enhance the capacity of State and local  
7           agencies and service providers to identify, evaluate,  
8           and meet the needs of all children, particularly mi-  
9           nority, low-income, inner city, and rural children.

10          “(b) POLICY.—It is the policy of the United States  
11       to provide financial assistance to States—

12           “(1) to develop and implement a statewide,  
13           comprehensive, coordinated, multidisciplinary, inter-  
14           agency system that provides early intervention serv-  
15           ices for infants and toddlers with disabilities and  
16           their families;

17           “(2) to facilitate the coordination of payment  
18           for early intervention services from Federal, State,  
19           local, and private sources (including public and pri-  
20           vate insurance coverage);

21           “(3) to enhance State capacity to provide qual-  
22           ity early intervention services and expand and im-  
23           prove existing early intervention services being pro-  
24           vided to infants and toddlers with disabilities and  
25           their families; and

1           “(4) to encourage States to expand opportuni-  
2           ties for children under 3 years of age who would be  
3           at risk of having substantial developmental delay if  
4           they did not receive early intervention services.

5   **“SEC. 632. DEFINITIONS.**

6           “As used in this part:

7           “(1) AT-RISK INFANT OR TODDLER.—The term  
8           ‘at-risk infant or toddler’ means an individual under  
9           3 years of age who would be at risk of experiencing  
10          a substantial developmental delay if early interven-  
11          tion services were not provided to the individual.

12          “(2) COUNCIL.—The term ‘council’ means a  
13          State interagency coordinating council established  
14          under section 641.

15          “(3) DEVELOPMENTAL DELAY.—The term ‘de-  
16          velopmental delay’, when used with respect to an in-  
17          dividual residing in a State, has the meaning given  
18          such term by the State under section 635(a)(1).

19          “(4) EARLY INTERVENTION SERVICES.—The  
20          term ‘early intervention services’ means develop-  
21          mental services that—

22                  “(A) are provided under public supervision;

23                  “(B) are provided at no cost except where

24                  Federal or State law provides for a system of

1 payments by families, including a schedule of  
2 sliding fees;

3 “(C) are designed to meet the develop-  
4 mental needs of an infant or toddler with a dis-  
5 ability in any 1 or more of the following areas:

6 “(i) physical development;

7 “(ii) cognitive development;

8 “(iii) communication development;

9 “(iv) social or emotional development;

10 or

11 “(v) adaptive development;

12 “(D) meet the standards of the State in  
13 which the services are provided, including the  
14 requirements of this part;

15 “(E) include—

16 “(i) family training, counseling, and  
17 home visits;

18 “(ii) special instruction;

19 “(iii) speech-language pathology and  
20 audiology services;

21 “(iv) occupational therapy;

22 “(v) physical therapy;

23 “(vi) psychological services;

24 “(vii) service coordination services;

1 “(viii) medical services only for diag-  
2 nostic or evaluation purposes;

3 “(ix) early identification, screening,  
4 and assessment services;

5 “(x) health services necessary to en-  
6 able the infant or toddler to benefit from  
7 the other early intervention services;

8 “(xi) social work services;

9 “(xii) vision services;

10 “(xiii) assistive technology devices and  
11 assistive technology services; and

12 “(xiv) transportation and related costs  
13 that are necessary to enable an infant or  
14 toddler and the infant’s or toddler’s family  
15 to receive another service described in this  
16 paragraph;

17 “(F) are provided by qualified personnel,  
18 including—

19 “(i) special educators;

20 “(ii) speech-language pathologists and  
21 audiologists;

22 “(iii) occupational therapists;

23 “(iv) physical therapists;

24 “(v) psychologists;

25 “(vi) social workers;

1 “(vii) nurses;

2 “(viii) nutritionists;

3 “(ix) family therapists;

4 “(x) orientation and mobility special-  
5 ists; and

6 “(xi) pediatricians and other physi-  
7 cians;

8 “(G) to the maximum extent appropriate,  
9 are provided in natural environments, including  
10 the home, and community settings in which  
11 children without disabilities participate; and

12 “(H) are provided in conformity with an  
13 individualized family service plan adopted in ac-  
14 cordance with section 636.

15 “(5) INFANT OR TODDLER WITH A DIS-  
16 ABILITY.—The term ‘infant or toddler with a dis-  
17 ability’—

18 “(A) means an individual under 3 years of  
19 age who needs early intervention services be-  
20 cause the individual—

21 “(i) is experiencing developmental  
22 delays, as measured by appropriate diag-  
23 nostic instruments and procedures in 1 or  
24 more of the areas of cognitive development,  
25 physical development, communication de-

1                   velopment, social or emotional develop-  
2                   ment, and adaptive development; or

3                   “(ii) has a diagnosed physical or men-  
4                   tal condition which has a high probability  
5                   of resulting in developmental delay; and

6                   “(B) may also include, at a State’s discre-  
7                   tion, at-risk infants and toddlers.

8   **“SEC. 633. GENERAL AUTHORITY.**

9           “The Secretary shall, in accordance with this part,  
10   make grants to States (from their allotments under sec-  
11   tion 643) to assist each State to maintain and implement  
12   a statewide, comprehensive, coordinated, multidisciplinary,  
13   interagency system to provide early intervention services  
14   for infants and toddlers with disabilities and their families.

15   **“SEC. 634. ELIGIBILITY.**

16           “In order to be eligible for a grant under section 633,  
17   a State shall demonstrate to the Secretary that the  
18   State—

19           “(1) has adopted a policy that appropriate early  
20   intervention services are available to all infants and  
21   toddlers with disabilities in the State and their fami-  
22   lies, including Indian infants and toddlers with dis-  
23   abilities and their families residing on a reservation  
24   geographically located in the State; and



1           “(2) has in effect a statewide system that meets  
2           the requirements of section 635.

3   **“SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.**

4           “(a) IN GENERAL.—A statewide system described in  
5   section 633 shall include, at a minimum, the following  
6   components:

7           “(1) A definition of the term ‘developmental  
8           delay’ that—

9                   “(A) will be used by the State in carrying  
10           out programs under this part; and

11                   “(B) covers, at a minimum, all infants and  
12           toddlers with—

13                           “(i) a developmental delay of 35 per-  
14                           cent or more in 1 of the developmental  
15                           areas described in section 632(5)(A)(i); or

16                           “(ii) a developmental delay of 25 per-  
17                           cent or more in 2 or more of the develop-  
18                           mental areas described in section  
19                           632(5)(A)(i).

20           “(2) A State policy that is in effect and that  
21           ensures that appropriate early intervention services  
22           are available to all infants and toddlers with disabil-  
23           ities and their families, including Indian infants and  
24           toddlers and their families residing on a reservation  
25           geographically located in the State.

1           “(3) A timely, comprehensive, multidisciplinary  
2           evaluation of the functioning of each infant or tod-  
3           dler with a disability in the State, and a family-di-  
4           rected identification of the needs of each family of  
5           such an infant or toddler, to appropriately assist in  
6           the development of the infant or toddler.

7           “(4) For each infant or toddler with a disability  
8           in the State, an individualized family service plan in  
9           accordance with section 636, including service co-  
10          ordination services in accordance with such service  
11          plan.

12          “(5) A comprehensive child find system, con-  
13          sistent with part B, including a system for making  
14          referrals to service providers that includes timelines  
15          and provides for participation by primary referral  
16          sources.

17          “(6) A public awareness program focusing on  
18          early identification of infants and toddlers with dis-  
19          abilities, including the preparation and dissemination  
20          by the lead agency designated or established under  
21          paragraph (10) to all primary referral sources, espe-  
22          cially hospitals and physicians, of information for  
23          parents on the availability of early intervention serv-  
24          ices, and procedures for determining the extent to

1       which such sources disseminate such information to  
2       parents of infants and toddlers.

3               “(7) A central directory that includes informa-  
4       tion on early intervention services, resources, and ex-  
5       perts available in the State and research and dem-  
6       onstration projects being conducted in the State.

7               “(8) A comprehensive system of personnel de-  
8       velopment, including the training of paraprofes-  
9       sionals and the training of primary referral sources  
10      with respect to the basic components of early inter-  
11      vention services available in the State, which com-  
12      prehensive system may include—

13               “(A) implementing innovative strategies  
14      and activities for the recruitment and retention  
15      of early education service providers;

16               “(B) promoting the preparation of early  
17      intervention providers who are fully and appro-  
18      priately qualified to provide early intervention  
19      services under this part;

20               “(C) training personnel to work in rural  
21      and inner-city areas; and

22               “(D) training personnel to coordinate tran-  
23      sition services for infants and toddlers served  
24      under this part from an early intervention pro-

1           gram under this part to preschool or other ap-  
2           propriate services.

3           “(9) Subject to subsection (b), policies and pro-  
4           cedures relating to the establishment and mainte-  
5           nance of standards to ensure that personnel nec-  
6           essary to carry out this part are appropriately and  
7           adequately prepared and trained, including the es-  
8           tablishment and maintenance of standards which are  
9           consistent with any State-approved or recognized  
10          certification, licensing, registration, or other com-  
11          parable requirements which apply to the area in  
12          which such personnel are providing early interven-  
13          tion services, except that nothing in this part (in-  
14          cluding this paragraph) shall be construed to pro-  
15          hibit the use of paraprofessionals and assistants who  
16          are appropriately trained in accordance with State  
17          law, regulation, or written policy, to assist in the  
18          provision of early intervention services under this  
19          part to infants and toddlers with disabilities.

20          “(10) A single line of responsibility in a lead  
21          agency designated or established by the Governor for  
22          carrying out—

23                 “(A) the general administration and super-  
24                 vision of programs and activities receiving as-  
25                 sistance under section 633, and the monitoring

1 of programs and activities used by the State to  
2 carry out this part, whether or not such pro-  
3 grams or activities are receiving assistance  
4 made available under section 633, to ensure  
5 that the State complies with this part;

6 “(B) the identification and coordination of  
7 all available resources within the State from  
8 Federal, State, local, and private sources;

9 “(C) the assignment of financial responsi-  
10 bility in accordance with section 637(a)(2) to  
11 the appropriate agencies;

12 “(D) the development of procedures to en-  
13 sure that services are provided to infants and  
14 toddlers with disabilities and their families  
15 under this part in a timely manner pending the  
16 resolution of any disputes among public agen-  
17 cies or service providers;

18 “(E) the resolution of intra- and inter-  
19 agency disputes; and

20 “(F) the entry into formal interagency  
21 agreements that define the financial responsi-  
22 bility of each agency for paying for early inter-  
23 vention services (consistent with State law) and  
24 procedures for resolving disputes and that in-

1           clude all additional components necessary to en-  
2           sure meaningful cooperation and coordination.

3           “(11) A policy pertaining to the contracting or  
4           making of other arrangements with service providers  
5           to provide early intervention services in the State,  
6           consistent with the provisions of this part, including  
7           the contents of the application used and the condi-  
8           tions of the contract or other arrangements.

9           “(12) A procedure for securing timely reim-  
10          bursements of funds used under this part in accord-  
11          ance with section 640(a).

12          “(13) Procedural safeguards with respect to  
13          programs under this part, as required by section  
14          639.

15          “(14) A system for compiling data requested by  
16          the Secretary under section 618 that relates to this  
17          part.

18          “(15) A State interagency coordinating council  
19          that meets the requirements of section 641.

20          “(16) Policies and procedures to ensure that,  
21          consistent with section 636(d)(5) to the maximum  
22          extent appropriate, early intervention services are  
23          provided in natural environments unless a specific  
24          outcome cannot be met satisfactorily for the infant  
25          or toddler in a natural environment.

1       “(b) POLICY.—In implementing subsection (a)(9), a  
2 State may adopt a policy that includes making ongoing  
3 good-faith efforts to recruit and hire appropriately and  
4 adequately trained personnel to provide early intervention  
5 services to infants and toddlers with disabilities, including,  
6 in a geographic area of the State where there is a shortage  
7 of such personnel, the most qualified individuals available  
8 who are making satisfactory progress toward completing  
9 applicable coursework necessary to meet the standards de-  
10 scribed in subsection (a)(9), consistent with State law  
11 within 3 years.

12 **“SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.**

13       “(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—  
14 A statewide system described in section 633 shall provide,  
15 at a minimum, for each infant or toddler with a disability,  
16 and the infant’s or toddler’s family, to receive—

17               “(1) a multidisciplinary assessment of the  
18 unique strengths and needs of the infant or toddler  
19 and the identification of services appropriate to meet  
20 such needs;

21               “(2) a family-directed assessment of the re-  
22 sources, priorities, and concerns of the family and  
23 the identification of the supports and services nec-  
24 essary to enhance the family’s capacity to meet the  
25 developmental needs of the infant or toddler; and

1           “(3) a written individualized family service plan  
2       developed by a multidisciplinary team, including the  
3       parents, as required by subsection (e), including a  
4       description of the appropriate transition services for  
5       the child.

6           “(b) PERIODIC REVIEW.—The individualized family  
7       service plan shall be evaluated once a year and the family  
8       shall be provided a review of the plan at 6-month intervals  
9       (or more often where appropriate based on infant or tod-  
10      dler and family needs).

11          “(c) PROMPTNESS AFTER ASSESSMENT.—The indi-  
12       vidualized family service plan shall be developed within a  
13       reasonable time after the assessment required by sub-  
14       section (a)(1) is completed. With the parents’ consent,  
15       early intervention services may commence prior to the  
16       completion of the assessment.

17          “(d) CONTENT OF PLAN.—The individualized family  
18       service plan shall be in writing and contain—

19               “(1) a statement of the infant’s or toddler’s  
20       present levels of physical development, cognitive de-  
21       velopment, communication development, social or  
22       emotional development, and adaptive development,  
23       based on objective criteria;

24               “(2) a statement of the family’s resources, pri-  
25       orities, and concerns relating to enhancing the devel-



1       opment of the family’s infant or toddler with a dis-  
2       ability;

3           “(3) a statement of the measurable outcomes  
4       expected to be achieved for the infant or toddler and  
5       the family, including, as appropriate, pre-literacy  
6       and language skills, and the criteria, procedures,  
7       and timelines used to determine the degree to which  
8       progress toward achieving the outcomes is being  
9       made and whether modifications or revisions of the  
10      outcomes or services are necessary;

11          “(4) a statement of specific early intervention  
12      services necessary to meet the unique needs of the  
13      infant or toddler and the family, including the fre-  
14      quency, intensity, and method of delivering services;

15          “(5) a statement of the natural environments in  
16      which early intervention services will appropriately  
17      be provided, including a justification of the extent,  
18      if any, to which the services will not be provided in  
19      a natural environment;

20          “(6) the projected dates for initiation of serv-  
21      ices and the anticipated length, duration, and fre-  
22      quency of the services;

23          “(7) the identification of the service coordinator  
24      from the profession most immediately relevant to the  
25      infant’s or toddler’s or family’s needs (or who is oth-

1       erwise qualified to carry out all applicable respon-  
2       sibilities under this part) who will be responsible for  
3       the implementation of the plan and coordination  
4       with other agencies and persons, including transition  
5       services; and

6               “(8) the steps to be taken to support the transi-  
7       tion of the toddler with a disability to preschool or  
8       other appropriate services.

9       “(e) PARENTAL CONSENT.—The contents of the indi-  
10      vidualized family service plan shall be fully explained to  
11      the parents and informed written consent from the par-  
12      ents shall be obtained prior to the provision of early inter-  
13      vention services described in such plan. If the parents do  
14      not provide consent with respect to a particular early  
15      intervention service, then only the early intervention serv-  
16      ices to which consent is obtained shall be provided.

17   **“SEC. 637. STATE APPLICATION AND ASSURANCES.**

18       “(a) APPLICATION.—A State desiring to receive a  
19      grant under section 633 shall submit an application to the  
20      Secretary at such time and in such manner as the Sec-  
21      retary may reasonably require. The application shall con-  
22      tain—

23               “(1) a designation of the lead agency in the  
24      State that will be responsible for the administration  
25      of funds provided under section 633;

1           “(2) a designation of an individual or entity re-  
2           sponsible for assigning financial responsibility  
3           among appropriate agencies;

4           “(3) information demonstrating eligibility of the  
5           State under section 634, including—

6                   “(A) information demonstrating to the  
7           Secretary’s satisfaction that the State has in ef-  
8           fect the statewide system required by section  
9           633; and

10                   “(B) a description of services to be pro-  
11           vided to infants and toddlers with disabilities  
12           and their families through the system;

13           “(4) if the State provides services to at-risk in-  
14           fants and toddlers through the system, a description  
15           of such services;

16           “(5) a description of the uses for which funds  
17           will be expended in accordance with this part;

18           “(6) a description of the State policies and pro-  
19           cedures that require the referral for early interven-  
20           tion services of a child under the age of 3 who—

21                   “(A) is involved in a substantiated case of  
22           child abuse or neglect; or

23                   “(B) is identified as affected by illegal sub-  
24           stance abuse, or withdrawal symptoms resulting  
25           from prenatal drug exposure;

1           “(7) a description of the procedure used to en-  
2           sure that resources are made available under this  
3           part for all geographic areas within the State;

4           “(8) a description of State policies and proce-  
5           dures that ensure that, prior to the adoption by the  
6           State of any other policy or procedure necessary to  
7           meet the requirements of this part, there are public  
8           hearings, adequate notice of the hearings, and an  
9           opportunity for comment available to the general  
10          public, including individuals with disabilities and  
11          parents of infants and toddlers with disabilities;

12          “(9) a description of the policies and procedures  
13          to be used—

14               “(A) to ensure a smooth transition for tod-  
15               dlers receiving early intervention services under  
16               this part to preschool, other appropriate serv-  
17               ices, or exiting the program, including a de-  
18               scription of how—

19                   “(i) the families of such toddlers will  
20                   be included in the transition plans required  
21                   by subparagraph (C); and

22                   “(ii) the lead agency designated or es-  
23                   tablished under section 635(a)(10) will—

24                       “(I) notify the local educational  
25                       agency for the area in which such a

1 child resides that the child will shortly  
2 reach the age of eligibility for pre-  
3 school services under part B, as deter-  
4 mined in accordance with State law;

5 “(II) in the case of a child who  
6 may be eligible for such preschool  
7 services, with the approval of the fam-  
8 ily of the child, convene a conference  
9 among the lead agency, the family,  
10 and the local educational agency at  
11 least 90 days (and at the discretion of  
12 all such parties, not more than 6  
13 months) before the child is eligible for  
14 the preschool services, to discuss any  
15 such services that the child may re-  
16 ceive; and

17 “(III) in the case of a child who  
18 may not be eligible for such preschool  
19 services, with the approval of the fam-  
20 ily, make reasonable efforts to con-  
21 vene a conference among the lead  
22 agency, the family, and providers of  
23 other appropriate services for children  
24 who are not eligible for preschool serv-  
25 ices under part B, to discuss the ap-

1                   appropriate services that the child may  
2                   receive;

3                   “(B) to review the child’s program options  
4                   for the period from the child’s third birthday  
5                   through the remainder of the school year; and

6                   “(C) to establish a transition plan, includ-  
7                   ing, as appropriate, steps to exit from the pro-  
8                   gram; and

9                   “(10) such other information and assurances as  
10                  the Secretary may reasonably require.

11               “(b) ASSURANCES.—The application described in  
12               subsection (a)—

13               “(1) shall provide satisfactory assurance that  
14               Federal funds made available under section 643 to  
15               the State will be expended in accordance with this  
16               part;

17               “(2) shall contain an assurance that the State  
18               will comply with the requirements of section 640;

19               “(3) shall provide satisfactory assurance that  
20               the control of funds provided under section 643, and  
21               title to property derived from those funds, will be in  
22               a public agency for the uses and purposes provided  
23               in this part and that a public agency will administer  
24               such funds and property;

25               “(4) shall provide for—

1           “(A) making such reports in such form  
2           and containing such information as the Sec-  
3           retary may require to carry out the Secretary’s  
4           functions under this part; and

5           “(B) keeping such reports and affording  
6           such access to the reports as the Secretary may  
7           find necessary to ensure the correctness and  
8           verification of the reports and proper disburse-  
9           ment of Federal funds under this part;

10          “(5) provide satisfactory assurance that Federal  
11          funds made available under section 643 to the  
12          State—

13               “(A) will not be commingled with State  
14          funds; and

15               “(B) will be used so as to supplement the  
16          level of State and local funds expended for in-  
17          fants and toddlers with disabilities and their  
18          families and in no case to supplant those State  
19          and local funds;

20          “(6) shall provide satisfactory assurance that  
21          such fiscal control and fund accounting procedures  
22          will be adopted as may be necessary to ensure prop-  
23          er disbursement of, and accounting for, Federal  
24          funds paid under section 643 to the State;

1           “(7) shall provide satisfactory assurance that  
2       policies and procedures have been adopted to ensure  
3       meaningful involvement of underserved groups, in-  
4       cluding minority, low-income, and rural families, in  
5       the planning and implementation of all the require-  
6       ments of this part; and

7           “(8) shall contain such other information and  
8       assurances as the Secretary may reasonably require  
9       by regulation.

10       “(c) STANDARD FOR DISAPPROVAL OF APPLICA-  
11   TION.—The Secretary may not disapprove such an appli-  
12   cation unless the Secretary determines, after notice and  
13   opportunity for a hearing, that the application fails to  
14   comply with the requirements of this section.

15       “(d) SUBSEQUENT STATE APPLICATION.—If a State  
16   has on file with the Secretary a policy, procedure, or as-  
17   surance that demonstrates that the State meets a require-  
18   ment of this section, including any policy or procedure  
19   filed under part C, as in effect before the date of enact-  
20   ment of the Individuals with Disabilities Education Im-  
21   provement Act of 2003, the Secretary shall consider the  
22   State to have met the requirement for purposes of receiv-  
23   ing a grant under this part.

24       “(e) MODIFICATION OF APPLICATION.—An applica-  
25   tion submitted by a State in accordance with this section



1 shall remain in effect until the State submits to the Sec-  
 2 retary such modifications as the State determines nec-  
 3 essary. This section shall apply to a modification of an  
 4 application to the same extent and in the same manner  
 5 as this section applies to the original application.

6 “(f) MODIFICATIONS REQUIRED BY THE SEC-  
 7 RETARY.—The Secretary may require a State to modify  
 8 its application under this section, but only to the extent  
 9 necessary to ensure the State’s compliance with this part,  
 10 if—

11 “(1) an amendment is made to this Act, or a  
 12 Federal regulation issued under this Act;

13 “(2) a new interpretation of this Act is made by  
 14 a Federal court or the State’s highest court; or

15 “(3) an official finding of noncompliance with  
 16 Federal law or regulations is made with respect to  
 17 the State.

18 **“SEC. 638. USES OF FUNDS.**

19 “In addition to using funds provided under section  
 20 633 to maintain and implement the statewide system re-  
 21 quired by such section, a State may use such funds—

22 “(1) for direct early intervention services for in-  
 23 fants and toddlers with disabilities, and their fami-  
 24 lies, under this part that are not otherwise funded  
 25 through other public or private sources;

1           “(2) to expand and improve on services for in-  
2           fants and toddlers and their families under this part  
3           that are otherwise available;

4           “(3) to provide a free appropriate public edu-  
5           cation, in accordance with part B, to children with  
6           disabilities from their third birthday to the begin-  
7           ning of the following school year; and

8           “(4) in any State that does not provide services  
9           for at-risk infants and toddlers under section  
10          637(a)(4), to strengthen the statewide system by ini-  
11          tiating, expanding, or improving collaborative efforts  
12          related to at-risk infants and toddlers, including es-  
13          tablishing linkages with appropriate public or private  
14          community-based organizations, services, and per-  
15          sonnel for the purposes of—

16               “(A) identifying and evaluating at-risk in-  
17               fants and toddlers;

18               “(B) making referrals of the infants and  
19               toddlers identified and evaluated under sub-  
20               paragraph (A); and

21               “(C) conducting periodic follow-up on each  
22               such referral to determine if the status of the  
23               infant or toddler involved has changed with re-  
24               spect to the eligibility of the infant or toddler  
25               for services under this part.

1 **“SEC. 639. PROCEDURAL SAFEGUARDS.**

2 “(a) MINIMUM PROCEDURES.—The procedural safe-  
3 guards required to be included in a statewide system  
4 under section 635(a)(13) shall provide, at a minimum, the  
5 following:

6 “(1) The timely administrative resolution of  
7 complaints by parents. Any party aggrieved by the  
8 findings and decision regarding an administrative  
9 complaint shall have the right to bring a civil action  
10 with respect to the complaint in any State court of  
11 competent jurisdiction or in a district court of the  
12 United States without regard to the amount in con-  
13 troversy. In any action brought under this para-  
14 graph, the court shall receive the records of the ad-  
15 ministrative proceedings, shall hear additional evi-  
16 dence at the request of a party, and, basing its deci-  
17 sion on the preponderance of the evidence, shall  
18 grant such relief as the court determines is appro-  
19 priate.

20 “(2) The right to confidentiality of personally  
21 identifiable information, including the right of par-  
22 ents to written notice of and written consent to the  
23 exchange of such information among agencies con-  
24 sistent with Federal and State law.

25 “(3) The right of the parents to determine  
26 whether they, their infant or toddler, or other family

1 members will accept or decline any early intervention  
2 service under this part in accordance with State law  
3 without jeopardizing other early intervention services  
4 under this part.

5 “(4) The opportunity for parents to examine  
6 records relating to assessment, screening, eligibility  
7 determinations, and the development and implemen-  
8 tation of the individualized family service plan.

9 “(5) Procedures to protect the rights of the in-  
10 fant or toddler whenever the parents of the infant or  
11 toddler are not known or cannot be found or the in-  
12 fant or toddler is a ward of the State, including the  
13 assignment of an individual (who shall not be an em-  
14 ployee of the State lead agency, or other State agen-  
15 cy, and who shall not be any person, or any em-  
16 ployee of a person, providing early intervention serv-  
17 ices to the infant or toddler or any family member  
18 of the infant or toddler) to act as a surrogate for the  
19 parents.

20 “(6) Written prior notice to the parents of the  
21 infant or toddler with a disability whenever the State  
22 agency or service provider proposes to initiate or  
23 change, or refuses to initiate or change, the identi-  
24 fication, evaluation, or placement of the infant or  
25 toddler with a disability, or the provision of appro-

1        appropriate early intervention services to the infant or  
2        toddler.

3                “(7) Procedures designed to ensure that the no-  
4        tice required by paragraph (6) fully informs the par-  
5        ents, in the parents’ native language, unless it clear-  
6        ly is not feasible to do so, of all procedures available  
7        pursuant to this section.

8                “(8) The right of parents to use mediation in  
9        accordance with section 615, except that—

10                “(A) any reference in the section to a  
11        State educational agency shall be considered to  
12        be a reference to a State’s lead agency estab-  
13        lished or designated under section 635(a)(10);

14                “(B) any reference in the section to a local  
15        educational agency shall be considered to be a  
16        reference to a local service provider or the  
17        State’s lead agency under this part, as the case  
18        may be; and

19                “(C) any reference in the section to the  
20        provision of free appropriate public education to  
21        children with disabilities shall be considered to  
22        be a reference to the provision of appropriate  
23        early intervention services to infants and tod-  
24        dlers with disabilities.

1       “(b) SERVICES DURING PENDENCY OF PRO-  
2 CEEDINGS.—During the pendency of any proceeding or ac-  
3 tion involving a complaint by the parents of an infant or  
4 toddler with a disability, unless the State agency and the  
5 parents otherwise agree, the infant or toddler shall con-  
6 tinue to receive the appropriate early intervention services  
7 currently being provided or, if applying for initial services,  
8 shall receive the services not in dispute.

9       **“SEC. 640. PAYOR OF LAST RESORT.**

10       “(a) NONSUBSTITUTION.—Funds provided under  
11 section 643 may not be used to satisfy a financial commit-  
12 ment for services that would have been paid for from an-  
13 other public or private source, including any medical pro-  
14 gram administered by the Secretary of Defense, but for  
15 the enactment of this part, except that whenever consid-  
16 ered necessary to prevent a delay in the receipt of appro-  
17 priate early intervention services by an infant, toddler, or  
18 family in a timely fashion, funds provided under section  
19 643 may be used to pay the provider of services pending  
20 reimbursement from the agency that has ultimate respon-  
21 sibility for the payment.

22       “(b) REDUCTION OF OTHER BENEFITS.—Nothing in  
23 this part shall be construed to permit the State to reduce  
24 medical or other assistance available or to alter eligibility  
25 under title V of the Social Security Act (relating to mater-

1 nal and child health) or title XIX of the Social Security  
 2 Act (relating to Medicaid for infants or toddlers with dis-  
 3 abilities) within the State.

4 **“SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.**

5 “(a) ESTABLISHMENT.—

6 “(1) IN GENERAL.—A State that desires to re-  
 7 ceive financial assistance under this part shall estab-  
 8 lish a State interagency coordinating council.

9 “(2) APPOINTMENT.—The council shall be ap-  
 10 pointed by the Governor. In making appointments to  
 11 the council, the Governor shall ensure that the mem-  
 12 bership of the council reasonably represents the pop-  
 13 ulation of the State.

14 “(3) CHAIRPERSON.—The Governor shall des-  
 15 ignate a member of the council to serve as the chair-  
 16 person of the council, or shall require the council to  
 17 so designate such a member. Any member of the  
 18 council who is a representative of the lead agency  
 19 designated under section 635(a)(10) may not serve  
 20 as the chairperson of the council.

21 “(b) COMPOSITION.—

22 “(1) IN GENERAL.—The council shall be com-  
 23 posed as follows:

24 “(A) PARENTS.—At least 20 percent of  
 25 the members shall be parents of infants or tod-

1           dlers with disabilities or children with disabil-  
2           ities aged 12 or younger, with knowledge of, or  
3           experience with, programs for infants and tod-  
4           dlers with disabilities. At least 1 such member  
5           shall be a parent of an infant or toddler with  
6           a disability or a child with a disability aged 6  
7           or younger.

8           “(B) SERVICE PROVIDERS.—At least 20  
9           percent of the members shall be public or pri-  
10          vate providers of early intervention services.

11          “(C) STATE LEGISLATURE.—At least 1  
12          member shall be from the State legislature.

13          “(D) PERSONNEL PREPARATION.—At least  
14          1 member shall be involved in personnel prepa-  
15          ration.

16          “(E) AGENCY FOR EARLY INTERVENTION  
17          SERVICES.—At least 1 member shall be from  
18          each of the State agencies involved in the provi-  
19          sion of, or payment for, early intervention serv-  
20          ices to infants and toddlers with disabilities and  
21          their families and shall have sufficient authority  
22          to engage in policy planning and implementa-  
23          tion on behalf of such agencies.

24          “(F) AGENCY FOR PRESCHOOL SERV-  
25          ICES.—At least 1 member shall be from the



1 State educational agency responsible for pre-  
2 school services to children with disabilities and  
3 shall have sufficient authority to engage in pol-  
4 icy planning and implementation on behalf of  
5 such agency.

6 “(G) STATE MEDICAID AGENCY.—At least  
7 1 member shall be from the agency responsible  
8 for the State medicaid program.

9 “(H) HEAD START AGENCY.—At least 1  
10 representative from a Head Start agency or  
11 program in the State.

12 “(I) CHILD CARE AGENCY.—At least 1  
13 representative from a State agency responsible  
14 for child care.

15 “(2) OTHER MEMBERS.—The council may in-  
16 clude other members selected by the Governor, in-  
17 cluding a representative from the Bureau of Indian  
18 Affairs, or where there is no BIA-operated or BIA-  
19 funded school, from the Indian Health Service or the  
20 tribe or tribal council.

21 “(c) MEETINGS.—The council shall meet at least  
22 quarterly and in such places as the council determines nec-  
23 essary. The meetings shall be publicly announced, and, to  
24 the extent appropriate, open and accessible to the general  
25 public.

1       “(d) MANAGEMENT AUTHORITY.—Subject to the ap-  
2       proval of the Governor, the council may prepare and ap-  
3       prove a budget using funds under this part to conduct  
4       hearings and forums, to reimburse members of the council  
5       for reasonable and necessary expenses for attending coun-  
6       cil meetings and performing council duties (including child  
7       care for parent representatives), to pay compensation to  
8       a member of the council if the member is not employed  
9       or must forfeit wages from other employment when per-  
10      forming official council business, to hire staff, and to ob-  
11      tain the services of such professional, technical, and cler-  
12      ical personnel as may be necessary to carry out its func-  
13      tions under this part.

14      “(e) FUNCTIONS OF COUNCIL.—

15           “(1) DUTIES.—The council shall—

16                   “(A) advise and assist the lead agency des-  
17                   ignated or established under section 635(a)(10)  
18                   in the performance of the responsibilities set  
19                   forth in such section, particularly the identifica-  
20                   tion of the sources of fiscal and other support  
21                   for services for early intervention programs, as-  
22                   signment of financial responsibility to the ap-  
23                   propriate agency, and the promotion of the  
24                   interagency agreements;

1           “(B) advise and assist the lead agency in  
2           the preparation of applications and amend-  
3           ments thereto;

4           “(C) advise and assist the State edu-  
5           cational agency regarding the transition of tod-  
6           dlers with disabilities to preschool and other ap-  
7           propriate services; and

8           “(D) prepare and submit an annual report  
9           to the Governor and to the Secretary on the  
10          status of early intervention programs for in-  
11          fants and toddlers with disabilities and their  
12          families operated within the State.

13          “(2) AUTHORIZED ACTIVITY.—The council may  
14          advise and assist the lead agency and the State edu-  
15          cational agency regarding the provision of appro-  
16          priate services for children from birth through age  
17          5. The council may advise appropriate agencies in  
18          the State with respect to the integration of services  
19          for infants and toddlers with disabilities and at-risk  
20          infants and toddlers and their families, regardless of  
21          whether at-risk infants and toddlers are eligible for  
22          early intervention services in the State.

23          “(f) CONFLICT OF INTEREST.—No member of the  
24          council shall cast a vote on any matter that is likely to  
25          provide a direct financial benefit to that member or other-

1 wise give the appearance of a conflict of interest under  
2 State law.

3 **“SEC. 642. FEDERAL ADMINISTRATION.**

4 “Sections 616, 617, and 618 shall, to the extent not  
5 inconsistent with this part, apply to the program author-  
6 ized by this part, except that—

7 “(1) any reference in such sections to a State  
8 educational agency shall be considered to be a ref-  
9 erence to a State’s lead agency established or des-  
10 igned under section 635(a)(10);

11 “(2) any reference in such sections to a local  
12 educational agency, educational service agency, or a  
13 State agency shall be considered to be a reference to  
14 an early intervention service provider under this  
15 part; and

16 “(3) any reference to the education of children  
17 with disabilities or the education of all children with  
18 disabilities shall be considered to be a reference to  
19 the provision of appropriate early intervention serv-  
20 ices to infants and toddlers with disabilities.

21 **“SEC. 643. ALLOCATION OF FUNDS.**

22 “(a) RESERVATION OF FUNDS FOR OUTLYING  
23 AREAS.—

24 “(1) IN GENERAL.—From the sums appro-  
25 priated to carry out this part for any fiscal year, the

1 Secretary may reserve not more than 1 percent for  
2 payments to Guam, American Samoa, the United  
3 States Virgin Islands, and the Commonwealth of the  
4 Northern Mariana Islands in accordance with their  
5 respective needs.

6 “(2) CONSOLIDATION OF FUNDS.—The provi-  
7 sions of Public Law 95–134, permitting the consoli-  
8 dation of grants to the outlying areas, shall not  
9 apply to funds those areas receive under this part.

10 “(b) PAYMENTS TO INDIANS.—

11 “(1) IN GENERAL.—The Secretary shall, sub-  
12 ject to this subsection, make payments to the Sec-  
13 retary of the Interior to be distributed to tribes,  
14 tribal organizations (as defined under section 4 of  
15 the Indian Self-Determination and Education Assist-  
16 ance Act), or consortia of the above entities for the  
17 coordination of assistance in the provision of early  
18 intervention services by the States to infants and  
19 toddlers with disabilities and their families on res-  
20 ervations served by elementary schools and sec-  
21 ondary schools for Indian children operated or fund-  
22 ed by the Department of the Interior. The amount  
23 of such payment for any fiscal year shall be 1.25  
24 percent of the aggregate of the amount available to  
25 all States under this part for such fiscal year.

1           “(2) ALLOCATION.—For each fiscal year, the  
2       Secretary of the Interior shall distribute the entire  
3       payment received under paragraph (1) by providing  
4       to each tribe, tribal organization, or consortium an  
5       amount based on the number of infants and toddlers  
6       residing on the reservation, as determined annually,  
7       divided by the total of such children served by all  
8       tribes, tribal organizations, or consortia.

9           “(3) INFORMATION.—To receive a payment  
10      under this subsection, the tribe, tribal organization,  
11      or consortium shall submit such information to the  
12      Secretary of the Interior as is needed to determine  
13      the amounts to be distributed under paragraph (2).

14          “(4) USE OF FUNDS.—The funds received by a  
15      tribe, tribal organization, or consortium shall be  
16      used to assist States in child find, screening, and  
17      other procedures for the early identification of In-  
18      dian children under 3 years of age and for parent  
19      training. Such funds may also be used to provide  
20      early intervention services in accordance with this  
21      part. Such activities may be carried out directly or  
22      through contracts or cooperative agreements with  
23      the BIA, local educational agencies, and other public  
24      or private nonprofit organizations. The tribe, tribal  
25      organization, or consortium is encouraged to involve

1 Indian parents in the development and implementa-  
2 tion of these activities. The above entities shall, as  
3 appropriate, make referrals to local, State, or Fed-  
4 eral entities for the provision of services or further  
5 diagnosis.

6 “(5) REPORTS.—To be eligible to receive a  
7 grant under paragraph (2), a tribe, tribal organiza-  
8 tion, or consortium shall make a biennial report to  
9 the Secretary of the Interior of activities undertaken  
10 under this subsection, including the number of con-  
11 tracts and cooperative agreements entered into, the  
12 number of children contacted and receiving services  
13 for each year, and the estimated number of children  
14 needing services during the 2 years following the  
15 year in which the report is made. The Secretary of  
16 the Interior shall include a summary of this informa-  
17 tion on a biennial basis to the Secretary of Edu-  
18 cation along with such other information as required  
19 under section 611(h)(3)(E). The Secretary of Edu-  
20 cation may require any additional information from  
21 the Secretary of the Interior.

22 “(6) PROHIBITED USES OF FUNDS.—None of  
23 the funds under this subsection may be used by the  
24 Secretary of the Interior for administrative pur-

1 poses, including child count, and the provision of  
2 technical assistance.

3 “(c) STATE ALLOTMENTS.—

4 “(1) IN GENERAL.—Except as provided in para-  
5 graphs (2) and (3) from the funds remaining for  
6 each fiscal year after the reservation and payments  
7 under subsections (a) and (b), the Secretary shall  
8 first allot to each State an amount that bears the  
9 same ratio to the amount of such remainder as the  
10 number of infants and toddlers in the State bears to  
11 the number of infants and toddlers in all States.

12 “(2) MINIMUM ALLOTMENTS.—Except as pro-  
13 vided in paragraph (3), no State shall receive an  
14 amount under this section for any fiscal year that is  
15 less than the greater of—

16 “(A)  $\frac{1}{2}$  of 1 percent of the remaining  
17 amount described in paragraph (1); or

18 “(B) \$500,000.

19 “(3) RATABLE REDUCTION.—

20 “(A) IN GENERAL.—If the sums made  
21 available under this part for any fiscal year are  
22 insufficient to pay the full amounts that all  
23 States are eligible to receive under this sub-  
24 section for such year, the Secretary shall rat-



1 ably reduce the allotments to such States for  
 2 such year.

3 “(B) ADDITIONAL FUNDS.—If additional  
 4 funds become available for making payments  
 5 under this subsection for a fiscal year, allot-  
 6 ments that were reduced under subparagraph  
 7 (A) shall be increased on the same basis the al-  
 8 lotments were reduced.

9 “(4) DEFINITIONS.—For the purpose of this  
 10 subsection—

11 “(A) the terms ‘infants’ and ‘toddlers’  
 12 mean children under 3 years of age; and

13 “(B) the term ‘State’ means each of the 50  
 14 States, the District of Columbia, and the Com-  
 15 monwealth of Puerto Rico.

16 “(d) REALLOTMENT OF FUNDS.—If a State elects  
 17 not to receive its allotment under subsection (c), the Sec-  
 18 retary shall reallocate, among the remaining States, amounts  
 19 from such State in accordance with such subsection.

20 **“SEC. 644. AUTHORIZATION OF APPROPRIATIONS.**

21 “For the purpose of carrying out this part, there are  
 22 authorized to be appropriated such sums as may be nec-  
 23 essary for each of the fiscal years 2004 through 2009.

1    **“PART D—NATIONAL ACTIVITIES TO IMPROVE**  
2    **EDUCATION OF CHILDREN WITH DISABILITIES**  
3    **“SEC. 650. FINDINGS.**

4       “Congress finds the following:

5           “(1) The Federal Government has an ongoing  
6       obligation to support activities that contribute to  
7       positive results for children with disabilities, ena-  
8       bling them to lead productive and independent adult  
9       lives.

10          “(2) Systemic change benefiting all students,  
11       including children with disabilities, requires the in-  
12       volvement of States, local educational agencies, par-  
13       ents, individuals with disabilities and their families,  
14       teachers and other service providers, and other inter-  
15       ested individuals and organizations to develop and  
16       implement comprehensive strategies that improve  
17       educational results for children with disabilities.

18          “(3) State educational agencies, in partnership  
19       with local educational agencies, parents of children  
20       with disabilities, and other individuals and organiza-  
21       tions, are in the best position to improve education  
22       for children with disabilities and to address their  
23       special needs.

24          “(4) An effective educational system serving  
25       students with disabilities should—

1           “(A) maintain high academic achievement  
2 standards and clear performance goals for chil-  
3 dren, consistent with the standards and expect-  
4 tations for all students in the educational sys-  
5 tem, and provide for appropriate and effective  
6 strategies and methods to ensure that all chil-  
7 dren with disabilities have the opportunity to  
8 achieve those standards and goals;

9           “(B) clearly define, in objective, measur-  
10 able terms, the school and post-school results  
11 that children with disabilities are expected to  
12 achieve; and

13           “(C) promote transition services as de-  
14 scribed in section 602(32) and coordinate State  
15 and local education, social, health, mental  
16 health, and other services, in addressing the full  
17 range of student needs, particularly the needs  
18 of children with disabilities who need significant  
19 levels of support to participate and learn in  
20 school and the community.

21           “(5) The availability of an adequate number of  
22 qualified personnel is critical to serve effectively chil-  
23 dren with disabilities, to assume leadership positions  
24 in administration and direct services, to provide

1 teacher training, and to conduct high quality re-  
2 search to improve special education.

3 “(6) High quality, comprehensive professional  
4 development programs are essential to ensure that  
5 the persons responsible for the education or transi-  
6 tion of children with disabilities possess the skills  
7 and knowledge necessary to address the educational  
8 and related needs of those children.

9 “(7) Models of professional development should  
10 be scientifically based and reflect successful prac-  
11 tices, including strategies for recruiting, preparing,  
12 and retaining personnel.

13 “(8) Continued support is essential for the de-  
14 velopment and maintenance of a coordinated and  
15 high quality program of research to inform success-  
16 ful teaching practices and model curricula for edu-  
17 cating children with disabilities.

18 “(9) A comprehensive research agenda should  
19 be established and pursued to promote the highest  
20 quality and rigor in special education research, and  
21 to address the full range of issues facing children  
22 with disabilities, parents of children with disabilities,  
23 school personnel, and others.

24 “(10) Training, technical assistance, support,  
25 and dissemination activities are necessary to ensure

1       that parts B and C are fully implemented and  
2       achieve high quality early intervention, educational,  
3       and transitional results for children with disabilities  
4       and their families.

5               “(11) Parents, teachers, administrators, and re-  
6       lated services personnel need technical assistance  
7       and information in a timely, coordinated, and acces-  
8       sible manner in order to improve early intervention,  
9       educational, and transitional services and results at  
10      the State and local levels for children with disabil-  
11      ities and their families.

12              “(12) Parent training and information activities  
13      assist parents of a child with a disability in dealing  
14      with the multiple pressures of parenting such a child  
15      and are of particular importance in—

16              “(A) playing a vital role in creating and  
17      preserving constructive relationships between  
18      parents of children with disabilities and schools  
19      by facilitating open communication between the  
20      parents and schools; encouraging dispute reso-  
21      lution at the earliest possible point in time; and  
22      discouraging the escalation of an adversarial  
23      process between the parents and schools;

24              “(B) ensuring the involvement of parents  
25      in planning and decisionmaking with respect to

1 early intervention, educational, and transitional  
2 services;

3 “(C) achieving high quality early interven-  
4 tion, educational, and transitional results for  
5 children with disabilities;

6 “(D) providing such parents information  
7 on their rights, protections, and responsibilities  
8 under this Act to ensure improved early inter-  
9 vention, educational, and transitional results for  
10 children with disabilities;

11 “(E) assisting such parents in the develop-  
12 ment of skills to participate effectively in the  
13 education and development of their children and  
14 in the transitions described in section 602(32);

15 “(F) supporting the roles of such parents  
16 as participants within partnerships seeking to  
17 improve early intervention, educational, and  
18 transitional services and results for children  
19 with disabilities and their families; and

20 “(G) supporting such parents who may  
21 have limited access to services and supports,  
22 due to economic, cultural, or linguistic barriers.

23 “(13) Support is needed to improve techno-  
24 logical resources and integrate technology, including  
25 universally designed technologies, into the lives of

1 children with disabilities, parents of children with  
 2 disabilities, school personnel, and others through  
 3 curricula, services, and assistive technologies.

4 **“Subpart 1—State Personnel Preparation and**  
 5 **Professional Development Grants**

6 **“SEC. 651. PURPOSE; DEFINITION; PROGRAM AUTHORITY.**

7 “(a) PURPOSE.—The purpose of this subpart is to  
 8 assist State educational agencies in reforming and improv-  
 9 ing their systems for personnel preparation and profes-  
 10 sional development in early intervention, educational, and  
 11 transition services in order to improve results for children  
 12 with disabilities.

13 “(b) DEFINITION.—In this subpart the term ‘per-  
 14 sonnel’ means special education teachers, general edu-  
 15 cation teachers, principals, administrators, related services  
 16 personnel, paraprofessionals, and early intervention per-  
 17 sonnel serving infants, toddlers, preschoolers, or children  
 18 with disabilities.

19 “(c) PROGRAM AUTHORITY.—

20 “(1) COMPETITIVE GRANTS.—

21 “(A) IN GENERAL.—For any fiscal year  
 22 for which the amount appropriated under sec-  
 23 tion 655 is less than \$100,000,000, the Sec-  
 24 retary is authorized to award grants, on a com-  
 25 petitive basis, to State educational agencies to

1 carry out the activities described in the State  
2 plan submitted under section 654.

3 “(B) PRIORITY.—The Secretary may give  
4 priority to awarding grants under subparagraph  
5 (A) to State educational agencies that—

6 “(i) have the greatest personnel short-  
7 ages; or

8 “(ii) demonstrate the greatest dif-  
9 ficulty meeting the requirements of section  
10 615(a)(14).

11 “(C) MINIMUM.—The Secretary shall make  
12 a grant to each State educational agency se-  
13 lected under subparagraph (A) in an amount  
14 for each fiscal year that is—

15 “(i) not less than \$500,000, nor more  
16 than \$2,000,000, in the case of the 50  
17 States, the District of Columbia, and the  
18 Commonwealth of Puerto Rico; and

19 “(ii) not less than \$80,000 in the case  
20 of an outlying area.

21 “(D) INCREASES.—The Secretary may in-  
22 crease the amount described in subparagraph  
23 (C) to account for inflation.



1           “(E) FACTORS.—The Secretary shall set  
2           the amount of each grant under subparagraph  
3           (A) after considering—

4                   “(i) the amount of funds available for  
5                   making the grants;

6                   “(ii) the relative population of the  
7                   State or outlying area;

8                   “(iii) the types of activities proposed  
9                   by the State or outlying area;

10                  “(iv) the alignment of proposed activi-  
11                  ties with section 612(a)(15);

12                  “(v) the alignment of proposed activi-  
13                  ties with the plans and applications sub-  
14                  mitted under sections 1111 and 2112, re-  
15                  spectively, of the Elementary and Sec-  
16                  ondary Education Act of 1965; and

17                  “(vi) the use, as appropriate, of sci-  
18                  entifically based activities.

19           “(2) FORMULA GRANTS.—

20                   “(A) IN GENERAL.—For any fiscal year  
21                   for which the funds appropriated under section  
22                   655 are equal to or greater than \$100,000,000,  
23                   the Secretary shall—

24                           “(i) reserve from such funds an  
25                           amount sufficient to continue to make pay-

1           ments for the fiscal year in accordance  
2           with the terms of each multi-year grant  
3           awarded under paragraph (1) for which  
4           the grant period has not ended; and

5           “(ii) use the remainder of such funds  
6           to award grants to State educational agen-  
7           cies, from allotments under subparagraph  
8           (B), to enable the State educational agen-  
9           cies to award contracts and subgrants, on  
10          a competitive basis, to carry out the au-  
11          thorized activities described in section 654.

12          “(B) ALLOTMENT.—Except as provided in  
13          subparagraph (C), from the remainder of funds  
14          described in subparagraph (A)(ii) for a fiscal  
15          year, the Secretary shall make an allotment to  
16          each State educational agency in an amount  
17          that bears the same relation to such remainder  
18          as the amount of funds the State received  
19          under section 611(d)(3) for the preceding fiscal  
20          year bears to the amount of funds received by  
21          all States under such section for the preceding  
22          fiscal year.

23          “(C) MINIMUM ALLOTMENT.—The amount  
24          of any State educational agency’s allotment  
25          under this paragraph for any fiscal year shall

1 not be less than  $\frac{1}{4}$  of 1 percent of the amount  
2 made available under this part for such year.

3 **“SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.**

4 “(a) ELIGIBLE APPLICANTS.—A State educational  
5 agency may apply for a grant under this subpart for a  
6 grant period of not less than 1 year and not more than  
7 5 years.

8 “(b) PARTNERS.—

9 “(1) IN GENERAL.—In order to be considered  
10 for a grant under this subpart, a State educational  
11 agency shall establish a partnership with local edu-  
12 cational agencies and other State agencies involved  
13 in, or concerned with, the education of children with  
14 disabilities, including institutions of higher education  
15 and the State agencies responsible for administering  
16 part C, child care, and vocational rehabilitation.

17 “(2) OTHER PARTNERS.—In order to be consid-  
18 ered for a grant under this subpart, a State edu-  
19 cational agency shall work in partnership with other  
20 persons and organizations involved in, and concerned  
21 with, the education of children with disabilities,  
22 which may include—

23 “(A) the Governor;

24 “(B) parents of children with disabilities  
25 ages birth through 26;

1           “(C) parents of nondisabled children ages  
2 birth through 26;

3           “(D) individuals with disabilities;

4           “(E) parent training and information cen-  
5 ters or community parent resource centers;

6           “(F) community based and other nonprofit  
7 organizations involved in the education and em-  
8 ployment of individuals with disabilities;

9           “(G) general and special education teach-  
10 ers, paraprofessionals, related services per-  
11 sonnel, and early intervention personnel;

12           “(H) the State advisory panel established  
13 under part B;

14           “(I) the State interagency coordinating  
15 council established under part C;

16           “(J) institutions of higher education within  
17 the State;

18           “(K) individuals knowledgeable about voca-  
19 tional education;

20           “(L) the State agency for higher edu-  
21 cation;

22           “(M) the State vocational rehabilitation  
23 agency;

1           “(N) public agencies with jurisdiction in  
2           the areas of health, mental health, social serv-  
3           ices, and juvenile justice;

4           “(O) other providers of professional devel-  
5           opment that work with infants, toddlers, pre-  
6           schoolers, and children with disabilities; and

7           “(P) other individuals.

8   **“SEC. 653. APPLICATIONS.**

9           “(a) IN GENERAL.—

10           “(1) SUBMISSION.—A State educational agency  
11           that desires to receive a grant under this subpart  
12           shall submit to the Secretary an application at such  
13           time, in such manner, and including such informa-  
14           tion as the Secretary may require.

15           “(2) STATE PLAN.—The application shall in-  
16           clude a plan that identifies and addresses the State  
17           and local needs for the professional development of  
18           administrators, principals, and teachers, as well as  
19           individuals who provide direct supplementary aids  
20           and services to children with disabilities, and that—

21           “(A) is designed to enable the State to  
22           meet the requirements of section 612(a)(14);

23           “(B) is based on an assessment of State  
24           and local needs that identifies critical aspects  
25           and areas in need of improvement related to the

1 preparation, ongoing training, and professional  
2 development of personnel that serve infants,  
3 toddlers, preschoolers, and children with disabili-  
4 ties within the State, including—

5 “(i) current and anticipated personnel  
6 vacancies and shortages; and

7 “(ii) the number of preservice pro-  
8 grams; and

9 “(C) is integrated and aligned, to the max-  
10 imum extent possible, with State plans and ac-  
11 tivities under the Elementary and Secondary  
12 Education Act of 1965, the Rehabilitation Act  
13 of 1973, and the Higher Education Act of  
14 1965, as appropriate.

15 “(3) REQUIREMENT.—The State application  
16 shall contain an assurance that the State edu-  
17 cational agency shall carry out each of the strategies  
18 described in subsection (b)(4).

19 “(b) ELEMENTS OF STATE PERSONNEL PREPARA-  
20 TION AND PROFESSIONAL DEVELOPMENT PLAN.—Each  
21 professional development plan shall—

22 “(1) describe a partnership agreement that is in  
23 effect for the period of the grant, which agreement  
24 shall specify—

1           “(A) the nature and extent of the partner-  
2           ship described in section 652(b) and the respec-  
3           tive roles of each member of the partnership;  
4           and

5           “(B) how the State will work in partner-  
6           ship with other persons and organizations in-  
7           volved in, and concerned with, the education of  
8           children with disabilities, including the respec-  
9           tive roles of each of the persons and organiza-  
10          tions;

11          “(2) describe how the strategies and activities  
12          described in paragraph (4) will be coordinated with  
13          other public resources (including part B and part C  
14          funds retained for use at the State level for per-  
15          sonnel and professional development purposes) and  
16          private resources;

17          “(3) describe how the State will align its profes-  
18          sional development plan under this subpart with the  
19          plan and application submitted under sections 1111  
20          and 2112, respectively, of the Elementary and Sec-  
21          ondary Education Act of 1965;

22          “(4) describe what strategies the State will use  
23          to address the professional development and per-  
24          sonnel needs identified under subsection (a)(2) and

1       how those strategies will be implemented, includ-  
2       ing—

3               “(A) a description of the preservice and in-  
4       service programs and activities to be supported  
5       under this subpart that will provide personnel  
6       with the knowledge and skills to meet the needs  
7       of, and improve the performance and achieve-  
8       ment of, infants, toddlers, preschoolers, and  
9       children with disabilities; and

10              “(B) how such strategies shall be inte-  
11       grated, to the maximum extent possible, with  
12       other activities supported by grants funded  
13       under this part, including those under section  
14       664;

15              “(5) provide an assurance that the State will  
16       provide technical assistance to local educational  
17       agencies to improve the quality of professional devel-  
18       opment available to meet the needs of personnel who  
19       serve children with disabilities;

20              “(6) provide an assurance that the State will  
21       provide technical assistance to entities that provide  
22       services to infants and toddlers with disabilities to  
23       improve the quality of professional development  
24       available to meet the needs of personnel serving such  
25       children;



1           “(7) describe how the State will recruit and re-  
2       tain highly qualified teachers and other qualified  
3       personnel in geographic areas of greatest need;

4           “(8) describe the steps the State will take to  
5       ensure that poor and minority children are not  
6       taught at higher rates by teachers who are not high-  
7       ly qualified; and

8           “(9) describe how the State will assess, on a  
9       regular basis, the extent to which the strategies im-  
10      plemented under this subpart have been effective in  
11      meeting the performance goals described in section  
12      612(a)(15).

13       “(c) PEER REVIEW.—

14           “(1) IN GENERAL.—The Secretary shall use a  
15      panel of experts who are competent, by virtue of  
16      their training, expertise, or experience, to evaluate  
17      applications for grants under section 651(c)(1).

18           “(2) COMPOSITION OF PANEL.—A majority of a  
19      panel described in paragraph (1) shall be composed  
20      of individuals who are not employees of the Federal  
21      Government.

22           “(3) PAYMENT OF FEES AND EXPENSES OF  
23      CERTAIN MEMBERS.—The Secretary may use avail-  
24      able funds appropriated to carry out this subpart to

1       pay the expenses and fees of panel members who are  
2       not employees of the Federal Government.

3       “(d) REPORTING PROCEDURES.—Each State edu-  
4       cational agency that receives a grant under this subpart  
5       shall submit annual performance reports to the Secretary.  
6       The reports shall describe the progress of the State in im-  
7       plementing its plan and analyzing the effectiveness of the  
8       State’s activities under this subpart.

9       **“SEC. 654. USE OF FUNDS.**

10       “(a) PROFESSIONAL DEVELOPMENT ACTIVITIES.—A  
11       State educational agency that receives a grant under this  
12       subpart shall use the grant funds to support activities in  
13       accordance with the State’s plan described in section 653,  
14       including 1 or more of the following:

15               “(1) Carrying out programs that provide sup-  
16       port to both special education and regular education  
17       teachers of children with disabilities, such as pro-  
18       grams that—

19                       “(A) provide teacher mentoring, team  
20       teaching, reduced class schedules and case  
21       loads, and intensive professional development;  
22       and

23                       “(B) use standards or assessments for  
24       guiding beginning teachers that are consistent  
25       with challenging State student academic

1 achievement and functional standards and with  
2 the requirements for professional development  
3 as defined in section 9101(34) of the Element-  
4 tary and Secondary Education Act of 1965.

5 “(2) Encouraging and supporting the training  
6 of special education and regular education teachers  
7 and administrators to effectively utilize and inte-  
8 grate technology—

9 “(A) into curricula and instruction, includ-  
10 ing training to improve the ability to collect,  
11 manage, and analyze data to improve teaching,  
12 decisionmaking, school improvement efforts,  
13 and accountability;

14 “(B) to enhance learning by children with  
15 disabilities; and

16 “(C) to effectively communicate with par-  
17 ents.

18 “(3) Providing professional development activi-  
19 ties that—

20 “(A) improve the knowledge of special edu-  
21 cation and regular education teachers con-  
22 cerning—

23 “(i) the academic and developmental  
24 or functional needs of students with dis-  
25 abilities; or

1 “(ii) effective instructional strategies,  
2 methods, and skills, and the use of State  
3 academic content standards and student  
4 academic achievement and functional  
5 standards, and State assessments, to im-  
6 prove teaching practices and student aca-  
7 demic achievement; and

8 “(B) improve the knowledge of special edu-  
9 cation and regular education teachers and prin-  
10 cipals and, in appropriate cases, paraprofes-  
11 sionals, concerning effective instructional prac-  
12 tices and that—

13 “(i) provide training in how to teach  
14 and address the needs of students with dif-  
15 ferent learning styles;

16 “(ii) involve collaborative groups of  
17 teachers and administrators;

18 “(iii) provide training in methods of—

19 “(I) positive behavior interven-  
20 tions and supports to improve student  
21 behavior in the classroom;

22 “(II) scientifically based reading  
23 instruction, including early literacy in-  
24 struction;

1                   “(III) early and appropriate  
2 interventions to identify and help chil-  
3 dren with disabilities;

4                   “(IV) effective instruction for  
5 children with low incidence disabil-  
6 ities;

7                   “(V) successful transitioning to  
8 postsecondary opportunities; and

9                   “(VI) using classroom-based  
10 techniques to assist children prior to  
11 referral for special education;

12                  “(iv) provide training to enable special  
13 education and regular education teachers  
14 and principals to work with and involve  
15 parents in their child’s education, including  
16 parents of low income and limited English  
17 proficient children with disabilities;

18                  “(v) provide training for special edu-  
19 cation, regular education, principals, and  
20 related services personnel in planning, de-  
21 veloping, and implementing effective and  
22 appropriate IEPs; and

23                  “(vi) providing training to meet the  
24 needs of students with significant health,

1 mobility, or behavioral needs prior to serv-  
2 ing such students;

3 “(C) train administrators, principals, and  
4 other relevant school personnel in conducting  
5 effective IEP meetings; and

6 “(D) develop and enhance instructional  
7 leadership skills of principals.

8 “(4) Developing and implementing initiatives to  
9 promote the recruitment and retention of highly  
10 qualified special education teachers, particularly ini-  
11 tiatives that have been proven effective in recruit-  
12 ment and retaining highly qualified teachers, includ-  
13 ing programs that provide—

14 “(A) teacher mentoring from exemplary  
15 special education teachers, principals, or super-  
16 intendents;

17 “(B) induction and support for special  
18 education teachers during their first 3 years of  
19 employment as teachers, respectively; or

20 “(C) incentives, including financial incen-  
21 tives, to retain special education teachers who  
22 have a record of success in helping students  
23 with disabilities.

1           “(5) Carrying out programs and activities that  
2           are designed to improve the quality of personnel who  
3           serve children with disabilities, such as—

4                   “(A) innovative professional development  
5                   programs (which may be provided through part-  
6                   nerships that include institutions of higher edu-  
7                   cation), including programs that train teachers  
8                   and principals to integrate technology into cur-  
9                   ricula and instruction to improve teaching,  
10                  learning, and technology literacy, which profes-  
11                  sional development shall be consistent with the  
12                  definition of professional development described  
13                  in section 9101(34) of the Elementary and Sec-  
14                  ondary Education Act of 1965; and

15                  “(B) development and use of proven, cost  
16                  effective strategies for the implementation of  
17                  professional development activities, such as  
18                  through the use of technology and distance  
19                  learning.

20           “(b) OTHER ACTIVITIES.—A State educational agen-  
21           cy that receives a grant under this subpart shall use the  
22           grant funds to support activities in accordance with the  
23           State’s plan described in section 653, including 1 or more  
24           of the following:

1           “(1) Reforming special education and regular  
2           education teacher certification (including recertifi-  
3           cation) or licensing requirements to ensure that—

4                   “(A) special education and regular edu-  
5           cation teachers have—

6                           “(i) the training and information nec-  
7                           essary to address the full range of needs of  
8                           children with disabilities across disability  
9                           categories; and

10                           “(ii) the necessary subject matter  
11                           knowledge and teaching skills in the aca-  
12                           demic subjects that they teach;

13                   “(B) special education and regular edu-  
14           cation teacher certification (including recertifi-  
15           cation) or licensing requirements are aligned  
16           with challenging State academic content stand-  
17           ards; and

18                   “(C) special education and regular edu-  
19           cation teachers have the subject matter knowl-  
20           edge and teaching skills, including technology  
21           literacy, necessary to help students meet chal-  
22           lenging State student academic achievement  
23           and functional standards.

24           “(2) Programs that establish, expand, or im-  
25           prove alternative routes for State certification of



1 special education teachers for highly qualified indi-  
2 viduals with a baccalaureate or master's degree, in-  
3 cluding mid-career professionals from other occupa-  
4 tions, paraprofessionals, and recent college or uni-  
5 versity graduates with records of academic distinc-  
6 tion who demonstrate the potential to become highly  
7 effective special education teachers.

8 “(3) Teacher advancement initiatives for special  
9 education teachers that promote professional growth  
10 and emphasize multiple career paths (such as paths  
11 to becoming a career teacher, mentor teacher, or ex-  
12 emplary teacher) and pay differentiation.

13 “(4) Developing and implementing mechanisms  
14 to assist local educational agencies and schools in ef-  
15 fectively recruiting and retaining highly qualified  
16 special education teachers.

17 “(5) Reforming tenure systems, implementing  
18 teacher testing for subject matter knowledge, and  
19 implementing teacher testing for State certification  
20 or licensing, consistent with title II of the Higher  
21 Education Act of 1965.

22 “(6) Funding projects to promote reciprocity of  
23 teacher certification or licensing between or among  
24 States for special education teachers, except that no  
25 reciprocity agreement developed under this para-

1 graph or developed using funds provided under this  
2 subpart may lead to the weakening of any State  
3 teaching certification or licensing requirement.

4 “(7) Developing or assisting local educational  
5 agencies to serve children with disabilities through  
6 the development and use of proven, innovative strat-  
7 egies to deliver intensive professional development  
8 programs that are both cost effective and easily ac-  
9 cessible, such as strategies that involve delivery  
10 through the use of technology, peer networks, and  
11 distance learning.

12 “(8) Developing, or assisting local educational  
13 agencies in developing, merit based performance sys-  
14 tems, and strategies that provide differential and  
15 bonus pay for special education teachers.

16 “(9) Supporting activities that ensure that  
17 teachers are able to use challenging State academic  
18 content standards and student academic and func-  
19 tional achievement standards, and State assessments  
20 for all children with disabilities, to improve instruc-  
21 tional practices and improve the academic achieve-  
22 ment of children with disabilities.

23 “(10) Coordinating with, and expanding centers  
24 established under, section 2113(c)(18) of the Ele-

1       mentary and Secondary Education Act of 1965 to  
2       benefit special education teachers.

3       “(c) CONTRACTS AND SUBGRANTS.—Each such State  
4       educational agency—

5               “(1) shall award contracts or subgrants to local  
6       educational agencies, institutions of higher edu-  
7       cation, parent training and information centers, or  
8       community parent resource centers, as appropriate,  
9       to carry out its State plan under this subpart; and

10              “(2) may award contracts and subgrants to  
11       other public and private entities, including the lead  
12       agency under part C, to carry out such plan.

13       “(d) USE OF FUNDS FOR PROFESSIONAL DEVELOP-  
14       MENT.—A State educational agency that receives a grant  
15       under this subpart shall use—

16              “(1) not less than 75 percent of the funds the  
17       State educational agency receives under the grant  
18       for any fiscal year for activities under subsection (a);  
19       and

20              “(2) not more than 25 percent of the funds the  
21       State educational agency receives under the grant  
22       for any fiscal year for activities under subsection (b).

23       “(e) GRANTS TO OUTLYING AREAS.—Public Law 95–  
24       134, permitting the consolidation of grants to the outlying  
25       areas, shall not apply to funds received under this subpart.

1 **“SEC. 655. AUTHORIZATION OF APPROPRIATIONS.**

2 “There are authorized to be appropriated to carry out  
3 this subpart such sums as may be necessary for each of  
4 the fiscal years 2004 through 2009.

5 **“Subpart 2—Scientifically Based Research, Technical**  
6 **Assistance, Model Demonstration Projects, and**  
7 **Dissemination of Information**

8 **“SEC. 660. PURPOSE.**

9 “The purpose of this subpart is—

10 “(1) to provide Federal funding for scientif-  
11 ically based research, technical assistance, model  
12 demonstration projects, and information dissemina-  
13 tion to improve early intervention, educational, and  
14 transitional results for children with disabilities; and

15 “(2) to assist State educational agencies and  
16 local educational agencies in improving their edu-  
17 cation systems.

18 **“SEC. 661. ADMINISTRATIVE PROVISIONS.**

19 “(a) COMPREHENSIVE PLAN.—

20 “(1) IN GENERAL.—After receiving input from  
21 interested individuals with relevant expertise, the  
22 Secretary shall develop and implement a comprehen-  
23 sive plan for activities carried out under this subpart  
24 (other than activities assisted under sections 662  
25 and 665) in order to enhance the provision of early  
26 intervention, educational, related and transitional

1 services to children with disabilities under parts B  
2 and C. The plan shall be coordinated with the agen-  
3 da developed pursuant to section 662(d) and shall  
4 include mechanisms to address early intervention,  
5 educational, related service and transitional needs  
6 identified by State educational agencies in applica-  
7 tions submitted for State program improvement  
8 grants under subpart 1.

9 “(2) PUBLIC COMMENT.—The Secretary shall  
10 provide a public comment period of at least 60 days  
11 on the plan.

12 “(3) DISTRIBUTION OF FUNDS.—In imple-  
13 menting the plan, the Secretary shall, to the extent  
14 appropriate, ensure that funds are awarded to re-  
15 cipients under this subpart to carry out activities  
16 that benefit, directly or indirectly, children with the  
17 full range of disabilities and of all ages.

18 “(4) REPORTS TO CONGRESS.—The Secretary  
19 shall annually report to Congress on the Secretary’s  
20 activities under this subpart, including an initial re-  
21 port not later than 12 months after the date of en-  
22 actment of the Individuals with Disabilities Edu-  
23 cation Improvement Act of 2003.

24 “(b) ELIGIBLE APPLICANTS.—

1           “(1) IN GENERAL.—Except as otherwise pro-  
 2           vided in this subpart, the following entities are eligi-  
 3           ble to apply for a grant, contract, or cooperative  
 4           agreement under this subpart:

5                   “(A) A State educational agency.

6                   “(B) A local educational agency.

7                   “(C) A public charter school that is a local  
 8           educational agency under State law.

9                   “(D) An institution of higher education.

10                  “(E) Any other public agency.

11                  “(F) A private nonprofit organization.

12                  “(G) An outlying area.

13                  “(H) An Indian tribe or a tribal organiza-  
 14           tion (as defined under section 4 of the Indian  
 15           Self-Determination and Education Assistance  
 16           Act).

17                  “(I) A for-profit organization.

18           “(2) SPECIAL RULE.—The Secretary may limit  
 19           the entities eligible for an award of a grant, con-  
 20           tract, or cooperative agreement to 1 or more cat-  
 21           egories of eligible entities described in paragraph  
 22           (1).

23           “(c) SPECIAL POPULATIONS.—

24                   “(1) APPLICATION REQUIREMENT.—In making  
 25           an award of a grant, contract, or cooperative agree-

1       ment under this subpart, the Secretary shall, as ap-  
2       propriate, require an applicant to meet the criteria  
3       set forth by the Secretary under this subpart and  
4       demonstrate how the applicant will address the  
5       needs of children with disabilities from minority  
6       backgrounds.

7               “(2) REQUIRED OUTREACH AND TECHNICAL AS-  
8       SISTANCE.—Notwithstanding any other provision of  
9       this Act other than paragraph (1), the Secretary  
10      shall reserve at least 1 percent of the total amount  
11      of funds made available to carry out this subpart for  
12      1 or both of the following activities:

13               “(A) To provide outreach and technical as-  
14      sistance to Historically Black Colleges and Uni-  
15      versities, and to institutions of higher education  
16      with minority enrollments of at least 25 per-  
17      cent, to promote the participation of such col-  
18      leges, universities, and institutions in activities  
19      under this subpart.

20               “(B) To enable Historically Black Colleges  
21      and Universities, and the institutions described  
22      in subparagraph (A), to assist other colleges,  
23      universities, institutions, and agencies in im-  
24      proving educational and transitional results for  
25      children with disabilities.

1           “(C) RESERVATION OF FUNDS.—The Sec-  
 2           retary may reserve funds made available under  
 3           this subpart to satisfy the requirements of sub-  
 4           paragraphs (A) and (B).

5           “(d) PRIORITIES.—The Secretary, in making an  
 6           award of a grant, contract, or cooperative agreement  
 7           under this subpart, may, without regard to the rulemaking  
 8           procedures under section 553(a) of title 5, United States  
 9           Code, limit competitions to, or otherwise give priority to—

10           “(1) projects that address 1 or more—

11                   “(A) age ranges;

12                   “(B) disabilities;

13                   “(C) school grades;

14                   “(D) types of educational placements or  
 15           early intervention environments;

16                   “(E) types of services;

17                   “(F) content areas, such as reading; or

18                   “(G) effective strategies for helping chil-  
 19           dren with disabilities learn appropriate behavior  
 20           in the school and other community based edu-  
 21           cational settings;

22           “(2) projects that address the needs of children  
 23           based on the severity or incidence of their disability;

24           “(3) projects that address the needs of—

25                   “(A) low achieving students;



1 “(B) underserved populations;

2 “(C) children from low income families;

3 “(D) limited English proficient children;

4 “(E) unserved and underserved areas;

5 “(F) rural or urban areas;

6 “(G) children whose behavior interferes

7 with their learning and socialization;

8 “(H) children with reading difficulties; or

9 “(I) children in charter schools;

10 “(4) projects to reduce inappropriate identifica-

11 tion of children as children with disabilities, particu-

12 larly among minority children;

13 “(5) projects that are carried out in particular

14 areas of the country, to ensure broad geographic

15 coverage;

16 “(6) projects that promote the development and

17 use of universally designed technologies, assistive

18 technology devices, and assistive technology services

19 to maximize children with disabilities’ access to and

20 participation in the general curriculum; and

21 “(7) any activity that is authorized in this sub-

22 part or subpart 3.

23 “(e) APPLICANT AND RECIPIENT RESPONSIBIL-

24 ITIES.—

1           “(1) DEVELOPMENT AND ASSESSMENT OF  
2 PROJECTS.—The Secretary shall require that an ap-  
3 plicant for, and a recipient of, a grant, contract, or  
4 cooperative agreement for a project under this sub-  
5 part—

6           “(A) involve individuals with disabilities or  
7 parents of individuals with disabilities ages  
8 birth through 26 in planning, implementing,  
9 and evaluating the project; and

10           “(B) where appropriate, determine whether  
11 the project has any potential for replication and  
12 adoption by other entities.

13           “(2) ADDITIONAL RESPONSIBILITIES.—The  
14 Secretary may require a recipient of a grant, con-  
15 tract, or cooperative agreement under this subpart  
16 to—

17           “(A) share in the cost of the project;

18           “(B) prepare the research and evaluation  
19 findings and products from the project in for-  
20 mats that are useful for specific audiences, in-  
21 cluding parents, administrators, teachers, early  
22 intervention personnel, related services per-  
23 sonnel, and individuals with disabilities;

24           “(C) disseminate such findings and prod-  
25 ucts; and

1           “(D) collaborate with other such recipients  
2           in carrying out subparagraphs (B) and (C).

3           “(f) APPLICATION MANAGEMENT.—

4           “(1) STANDING PANEL.—

5           “(A) IN GENERAL.—The Secretary shall  
6           establish and use a standing panel of experts  
7           who are competent, by virtue of their training,  
8           expertise, or experience, to evaluate applications  
9           under this subpart (other than applications for  
10          assistance under sections 662 and 665) that,  
11          individually, request more than \$75,000 per  
12          year in Federal financial assistance.

13          “(B) MEMBERSHIP.—The standing panel  
14          shall include, at a minimum—

15               “(i) individuals who are representa-  
16               tives of institutions of higher education  
17               that plan, develop, and carry out high  
18               quality programs of personnel preparation;

19               “(ii) individuals who design and carry  
20               out scientifically based research targeted to  
21               the improvement of special education pro-  
22               grams and services;

23               “(iii) individuals who have recognized  
24               experience and knowledge necessary to in-  
25               tegrate and apply scientifically based re-

1 search findings to improve educational and  
2 transitional results for children with dis-  
3 abilities;

4 “(iv) individuals who administer pro-  
5 grams at the State or local level in which  
6 children with disabilities participate;

7 “(v) individuals who prepare parents  
8 of children with disabilities to participate  
9 in making decisions about the education of  
10 their children;

11 “(vi) individuals who establish policies  
12 that affect the delivery of services to chil-  
13 dren with disabilities;

14 “(vii) parents of children with disabil-  
15 ities ages birth through 26 who are bene-  
16 fitting, or have benefited, from coordinated  
17 research, personnel preparation, and tech-  
18 nical assistance; and

19 “(viii) individuals with disabilities.

20 “(C) TERM.—Unless approved by the Sec-  
21 retary due to extenuating circumstances related  
22 to shortages of experts in a particular area of  
23 expertise or for a specific competition, no indi-  
24 vidual shall serve on the standing panel for  
25 more than 3 consecutive years.

1           “(2) PEER REVIEW PANELS FOR PARTICULAR  
2 COMPETITIONS.—

3           “(A) COMPOSITION.—The Secretary shall  
4 ensure that each sub panel selected from the  
5 standing panel that reviews applications under  
6 this subpart (other than sections 662 and 665)  
7 includes—

8           “(i) individuals with knowledge and  
9 expertise on the issues addressed by the  
10 activities authorized by this subpart; and

11           “(ii) to the extent practicable, parents  
12 of children with disabilities ages birth  
13 through 26, individuals with disabilities,  
14 and persons from diverse backgrounds.

15           “(B) FEDERAL EMPLOYMENT LIMITA-  
16 TION.—A majority of the individuals on each  
17 sub panel that reviews an application under this  
18 subpart (other than an application under sec-  
19 tions 662 and 665) shall be individuals who are  
20 not employees of the Federal Government.

21           “(3) USE OF DISCRETIONARY FUNDS FOR AD-  
22 MINISTRATIVE PURPOSES.—

23           “(A) EXPENSES AND FEES OF NON-FED-  
24 ERAL PANEL MEMBERS.—The Secretary may  
25 use funds made available under this subpart to

1           pay the expenses and fees of the panel members  
2           who are not officers or employees of the Fed-  
3           eral Government.

4           “(B) ADMINISTRATIVE SUPPORT.—The  
5           Secretary may use not more than 1 percent of  
6           the funds made available to carry out this sub-  
7           part to pay non-Federal entities for administra-  
8           tive support related to management of applica-  
9           tions submitted under this subpart.

10          “(4) AVAILABILITY OF CERTAIN PRODUCTS.—  
11          The Secretary shall ensure that recipients of grants,  
12          cooperative agreements, or contracts under this sub-  
13          part and subpart 3 make available in formats that  
14          are accessible to individuals with disabilities any  
15          products developed under such grants, cooperative  
16          agreements, or contracts that the recipient is mak-  
17          ing available to the public.

18          “(g) PROGRAM EVALUATION.—The Secretary may  
19          use funds made available to carry out this subpart to  
20          evaluate activities carried out under this subpart.

21          “(h) MINIMUM FUNDING REQUIRED.—

22                 “(1) IN GENERAL.—Subject to paragraph (2),  
23          the Secretary shall ensure that, for each fiscal year,  
24          at least the following amounts are provided under  
25          this subpart to address the following needs:

1           “(A) \$12,832,000 to address the edu-  
2           cational, related services, transitional, and early  
3           intervention needs of children with deaf-blind-  
4           ness.

5           “(B) \$4,000,000 to address the postsec-  
6           ondary, vocational, technical, continuing, and  
7           adult education needs of individuals with deaf-  
8           ness.

9           “(C) \$4,000,000 to address the edu-  
10          cational, related services, and transitional needs  
11          of children with an emotional disturbance and  
12          those who are at risk of developing an emo-  
13          tional disturbance.

14          “(2) RATABLE REDUCTION.—If the total  
15          amount appropriated to carry out sections 662, 664,  
16          and 674 for any fiscal year is less than  
17          \$130,000,000, the amounts listed in paragraph (1)  
18          shall be ratably reduced.

19          “(i) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—No  
20          State or local educational agency, or other public institu-  
21          tion or agency, may receive a grant or enter into a con-  
22          tract or cooperative agreement under this subpart that re-  
23          lates exclusively to programs, projects, and activities per-  
24          taining to children aged 3 through 5, inclusive, unless the  
25          State is eligible to receive a grant under section 619(b).

1 **“SEC. 662. RESEARCH TO IMPROVE RESULTS FOR CHIL-**  
2 **DREN WITH DISABILITIES.**

3 “(a) NATIONAL CENTER FOR SPECIAL EDUCATION  
4 RESEARCH.—

5 “(1) ESTABLISHMENT.—

6 “(A) IN GENERAL.—There is established,  
7 in the Institute of Education Sciences estab-  
8 lished under section 111 of the Education  
9 Sciences Reform Act of 2002 (hereinafter in  
10 this section referred to as ‘the Institute’), the  
11 National Center for Special Education Re-  
12 search.

13 “(B) MISSION.—The mission of the Na-  
14 tional Center for Special Education Research  
15 (hereafter in this section referred to as the  
16 ‘Center’) shall be to—

17 “(i) sponsor research to expand  
18 knowledge and understanding of the needs  
19 of infants, toddlers, and children with dis-  
20 abilities in order to improve the develop-  
21 mental, educational, and transitional re-  
22 sults of such individuals;

23 “(ii) sponsor research to improve serv-  
24 ices provided under, and support the im-  
25 plementation of, this Act; and



1                   “(iii) evaluate the implementation and  
2                   effectiveness of this Act in coordination  
3                   with the National Center for Education  
4                   Evaluation.

5                   “(2) COMMISSIONER.—The Center shall be  
6                   headed by a Commissioner for Special Education  
7                   Research (hereinafter in this section referred to as  
8                   ‘the Commissioner’). The Commissioner shall be ap-  
9                   pointed by the Director of the Institute (hereinafter  
10                  in this section referred to as ‘the Director’) in ac-  
11                  cordance with section 117 of the Education Sciences  
12                  Reform Act of 2002. The Commissioner shall have  
13                  substantial knowledge of the Center’s activities, in-  
14                  cluding a high level of expertise in the fields of re-  
15                  search, research management, and the education of  
16                  children with disabilities.

17                  “(3) APPLICABILITY OF EDUCATION SCIENCES  
18                  REFORM ACT OF 2002.—Parts A and E of the Edu-  
19                  cation Sciences Reform Act of 2002, and the stand-  
20                  ards for peer review of applications and for the con-  
21                  duct and evaluation of research under sections  
22                  133(a) and 134 of such Act, respectively, shall apply  
23                  to the Secretary, the Director, and the Commis-  
24                  sioner in carrying out this section.

1           “(4) GRANTS, CONTRACTS, AND COOPERATIVE  
2       AGREEMENTS.—In carrying out the duties under  
3       this part, the Director may award grants to, or  
4       enter into contracts or cooperative agreements with,  
5       eligible entities.

6           “(b) AUTHORIZED ACTIVITIES.—Activities that may  
7       be carried out under this section include research activities  
8       to—

9           “(1) improve services provided under this Act in  
10      order to improve academic achievement, functional  
11      outcomes, and educational results for children with  
12      disabilities;

13          “(2) identify scientifically based educational  
14      practices that support learning and improve aca-  
15      demic achievement, functional outcomes, and edu-  
16      cational results for all students with disabilities;

17          “(3) examine the special needs of preschool  
18      aged children, infants, and toddlers with disabilities,  
19      including factors that may result in developmental  
20      delays;

21          “(4) identify scientifically based related services  
22      and interventions that promote participation and  
23      progress in the general education curriculum and  
24      general education settings;

1           “(5) improve the alignment, compatibility, and  
2           development of valid and reliable assessments, in-  
3           cluding alternate assessments as described in section  
4           1111(b) of the Elementary and Secondary Edu-  
5           cation Act of 1965;

6           “(6) examine State content standards and alter-  
7           nate assessments for students with significant cog-  
8           nitive impairment in terms of academic achievement,  
9           individualized instructional need, appropriate edu-  
10          cation settings, and improved post-school results;

11          “(7) examine the educational, developmental,  
12          and transitional needs of children with high inci-  
13          dence and low incidence disabilities;

14          “(8) examine the extent to which overidentifica-  
15          tion and underidentification of children with disabil-  
16          ities occurs, and the causes thereof;

17          “(9) improve reading and literacy skills of chil-  
18          dren with disabilities;

19          “(10) examine and improve secondary and post-  
20          secondary education and transitional outcomes and  
21          results for children with disabilities;

22          “(11) examine methods of early intervention for  
23          children with disabilities who need significant levels  
24          of support;

1           “(12) examine and incorporate universal design  
2           concepts in the development of standards, assess-  
3           ments, curricula, and instructional methods as a  
4           method to improve educational and transitional re-  
5           sults for children with disabilities;

6           “(13) improve the preparation of personnel who  
7           provide educational and related services to children  
8           with disabilities to increase the academic achieve-  
9           ment of students with disabilities;

10          “(14) examine the excess costs of educating a  
11          child with a disability and expenses associated with  
12          high cost special education and related services; and

13          “(15) help parents improve educational results  
14          for their children, particularly related to transition  
15          issues.

16          “(c) STANDARDS.—The Commissioner shall ensure  
17          that activities assisted under this section—

18               “(1) conform to high standards of quality, in-  
19               tegrity, accuracy, validity, and reliability;

20               “(2) are carried out in conjunction with the  
21               standards for the conduct and evaluation of all re-  
22               search and development established by the National  
23               Center for Education Research; and

24               “(3) are objective, secular, neutral, and non-  
25               ideological, and are free of partisan political influ-

1       ence, and racial, cultural, gender, regional, or dis-  
2       ability bias.

3       “(d) PLAN.—The Commissioner shall propose to the  
4 Director a research plan, developed in collaboration with  
5 the Assistant Secretary for Special Education and Reha-  
6 bilitative Services, that—

7               “(1) is consistent with the priorities and mis-  
8 sion of the Institute of Education Sciences and the  
9 mission of the Special Education Research Center;

10              “(2) shall be carried out, updated, and modi-  
11 fied, as appropriate;

12              “(3) is consistent with the purpose of this Act;

13              “(4) contains an appropriate balance across all  
14 age ranges and types of children with disabilities;

15              “(5) provides for research that is objective and  
16 uses measurable indicators to assess its progress and  
17 results;

18              “(6) is coordinated with the comprehensive plan  
19 developed under section 661; and

20              “(7) provides that the research conducted under  
21 this part is relevant to special education practice and  
22 policy.

23       “(e) APPLICATIONS.—An eligible entity that wishes  
24 to receive a grant, or enter into a contract or cooperative  
25 agreement, under this section shall submit an application

1 to the Director at such time, in such manner, and con-  
2 taining such information as the Director may require.

3 “(f) DISSEMINATION.—The Center shall—

4 “(1) synthesize and disseminate, through the  
5 National Center for Education Evaluation and Re-  
6 gional Assistance, the findings and results of special  
7 education research conducted or supported by the  
8 Center; and

9 “(2) assist the Director in the preparation of a  
10 biennial report, as described in section 119 of the  
11 Education Sciences Reform Act of 2003.

12 “(g) AUTHORIZATION OF APPROPRIATIONS.—There  
13 are authorized to be appropriated to carry out this section  
14 such sums as may be necessary for each of fiscal years  
15 2004 through 2009.

16 **“SEC. 663. TECHNICAL ASSISTANCE, DEMONSTRATION**  
17 **PROJECTS, DISSEMINATION OF INFORMA-**  
18 **TION, AND IMPLEMENTATION OF SCIENTIF-**  
19 **ICALLY BASED RESEARCH.**

20 “(a) IN GENERAL.—From amounts made available  
21 under section 675, the Secretary, on a competitive basis,  
22 shall award grants to, or enter into contracts or coopera-  
23 tive agreements with, eligible entities to provide technical  
24 assistance, carry out model demonstration projects, dis-

1 seminate useful information, and implement activities that  
2 are supported by scientifically based research.

3 “(b) REQUIRED ACTIVITIES.—The Secretary shall  
4 support activities to improve services provided under this  
5 Act, including the practices of professionals and others in-  
6 volved in providing such services to children with disabil-  
7 ities, that promote academic achievement and functional  
8 performance to improve educational results and functional  
9 outcomes for children with disabilities through—

10 “(1) implementing effective strategies that are  
11 conducive to learning and for addressing inappro-  
12 priate behavior of students with disabilities in  
13 schools, including strategies to prevent children with  
14 emotional and behavioral problems from developing  
15 emotional disturbances that require the provision of  
16 special education and related services;

17 “(2) improving the alignment, compatibility,  
18 and development of valid and reliable assessment  
19 methods, including alternate assessment methods  
20 and evaluation methods, for assessing adequately  
21 yearly progress as described in section  
22 1111(b)(2)(B) of the Elementary and Secondary  
23 Education Act of 1965;

24 “(3) providing information to both regular edu-  
25 cation teachers and special education teachers to ad-

1 dress the different learning styles and disabilities of  
2 students;

3 “(4) disseminating innovative, effective, and ef-  
4 ficient curricula, materials (including those that are  
5 universally designed), instructional approaches, and  
6 strategies that—

7 “(A) support effective transitions between  
8 educational settings or from school to post-  
9 school settings;

10 “(B) support effective inclusion of students  
11 with disabilities in general education settings,  
12 especially students with low-incidence disabil-  
13 ities; and

14 “(C) improve educational and transitional  
15 results at all levels of the educational system in  
16 which the activities are carried out and, in par-  
17 ticular, that improve the progress of children  
18 with disabilities, as measured by assessments  
19 within the general education curriculum in-  
20 volved; and

21 “(5) demonstrating and applying scientifically-  
22 based findings to facilitate systematic changes re-  
23 lated to the provision of services to children with dis-  
24 abilities.



1       “(c) AUTHORIZED ACTIVITIES.—Activities that may  
2 be carried out under this section include activities to im-  
3 prove services provided under this Act, including the prac-  
4 tices of professionals and others involved in providing such  
5 services to children with disabilities, that promote aca-  
6 demic achievement and functional outcomes to improve re-  
7 sults for children with disabilities through—

8               “(1) applying and testing research findings in  
9 typical service settings to determine the usability, ef-  
10 fectiveness, and general applicability of those find-  
11 ings in such areas as improving instructional meth-  
12 ods, curricula, and tools, such as textbooks and  
13 media;

14              “(2) demonstrating and applying scientifically-  
15 based findings to facilitate systemic changes related  
16 to the provision of services to children with disabil-  
17 ities, in policy, procedure, practice, and the training  
18 and use of personnel;

19              “(3) supporting and promoting the coordination  
20 of early intervention, education, and transitional  
21 services for children with disabilities with services  
22 provided by health, rehabilitation, and social service  
23 agencies;

24              “(4) promoting improved alignment and com-  
25 patibility of general and special education reforms

1 concerned with curriculum and instructional reform,  
2 and evaluating of such reforms;

3 “(5) enabling professionals, parents of children  
4 with disabilities, and other persons, to learn about,  
5 and implement, the findings of scientifically based  
6 research and effective practices developed in model  
7 demonstration projects, relating to the provision of  
8 services to children with disabilities;

9 “(6) disseminating information relating to suc-  
10 cessful approaches to overcoming systemic barriers  
11 to the effective and efficient delivery of early inter-  
12 vention, educational, and transitional services, to  
13 personnel who provide services to children with dis-  
14 abilities;

15 “(7) assisting States and local educational  
16 agencies with the process of planning systemic  
17 changes that will promote improved early interven-  
18 tion, educational, and transitional results for chil-  
19 dren with disabilities;

20 “(8) promoting change through a multi-State or  
21 regional framework that benefits States, local edu-  
22 cational agencies, and other participants in partner-  
23 ships that are in the process of achieving systemic-  
24 change outcomes;

1           “(9) focusing on the needs and issues that are  
2           specific to a population of children with disabilities,  
3           such as providing single-State and multi-State tech-  
4           nical assistance and in-service training—

5                   “(A) to schools and agencies serving deaf-  
6           blind children and their families;

7                   “(B) to programs and agencies serving  
8           other groups of children with low-incidence dis-  
9           abilities and their families; and

10                   “(C) to address the postsecondary edu-  
11           cation needs of individuals who are deaf or  
12           hard-of-hearing;

13                   “(10) demonstrating models of personnel prepa-  
14           ration to ensure appropriate placements and services  
15           for all students with disabilities and to reduce  
16           disproportionality in eligibility, placement, and dis-  
17           ciplinary actions for minority and limited English  
18           proficient children; and

19                   “(11) disseminating information on how to re-  
20           duce racial and ethnic disproportionalities.

21           “(d) BALANCE AMONG DISABILITIES AND AGE  
22   RANGES.—In carrying out this section, the Secretary shall  
23   ensure that there is an appropriate balance across all age  
24   ranges and disabilities.

1       “(e) LINKING STATES TO INFORMATION SOURCES.—

2   In carrying out this section, the Secretary may support  
3   projects that link States to technical assistance resources,  
4   including special education and general education re-  
5   sources, and may make research and related products  
6   available through libraries, electronic networks, parent  
7   training projects, and other information sources.

8       “(f) APPLICATIONS.—

9           “(1) IN GENERAL.—An eligible entity that de-  
10   sires to receive a grant, or to enter into a contract  
11   or cooperative agreement, under this section shall  
12   submit an application to the Secretary at such time,  
13   in such manner, and containing such information as  
14   the Secretary may require.

15          “(2) CONTENTS.—The Secretary may, as ap-  
16   propriate, require eligible entities to demonstrate  
17   that the projects described in their applications are  
18   supported by scientifically based research that has  
19   been carried out in conjunction with the standards  
20   for the conduct and evaluation of all research and  
21   development established by the National Center for  
22   Education Research.

23          “(3) PRIORITY.—As appropriate, the Secretary  
24   shall give priority to applications that propose to  
25   serve teachers and school personnel directly in the

1 school environment or that strengthen State and  
2 local agency capacity to improve instructional prac-  
3 tices of personnel to improve educational results for  
4 children with disabilities in the school environment.

5 **“SEC. 664. PERSONNEL DEVELOPMENT TO IMPROVE SERV-**  
6 **ICES AND RESULTS FOR CHILDREN WITH DIS-**  
7 **ABILITIES.**

8 “(a) IN GENERAL.—The Secretary, on a competitive  
9 basis, shall award grants to, or enter into contracts or co-  
10 operative agreements with, eligible entities—

11 “(1) to help address State identified needs for  
12 highly qualified personnel in special education, re-  
13 lated services, early intervention, transition, and reg-  
14 ular education, to work with children with disabil-  
15 ities, consistent with the needs identified in the  
16 State plan described in section 653(a)(2) and the  
17 standards described in section 612(a)(14);

18 “(2) to ensure that those personnel have the  
19 necessary skills and knowledge, derived from prac-  
20 tices that have been determined, through scientif-  
21 ically based research, to be successful in serving  
22 those children;

23 “(3) to encourage increased focus on academics  
24 and core content areas in special education per-  
25 sonnel preparation programs;

1           “(4) to ensure that regular education teachers  
2           have the necessary skills and knowledge to provide  
3           instruction to students with disabilities in the reg-  
4           ular education classroom;

5           “(5) to ensure that all special education teach-  
6           ers teaching in core academic subjects are highly  
7           qualified;

8           “(6) to ensure that preservice and in-service  
9           personnel preparation programs include training  
10          in—

11                   “(A) the use of new technologies;

12                   “(B) the area of early intervention, edu-  
13                   cational, and transition services;

14                   “(C) effectively involving parents; and

15                   “(D) positive behavior supports; and

16          “(7) to provide high-quality professional devel-  
17          opment for principals, superintendents, and other  
18          administrators, including training in—

19                   “(A) instructional leadership;

20                   “(B) behavioral supports in the school and  
21                   classroom;

22                   “(C) paperwork reduction;

23                   “(D) promoting improved collaboration be-  
24                   tween special education and general education  
25                   teachers;

1                   “(E) assessment and accountability;

2                   “(F) ensuring effective learning environ-  
3                   ments; and

4                   “(G) fostering positive relationships with  
5                   parents.

6           “(b) PERSONNEL DEVELOPMENT; AUTHORIZED AC-  
7           TIVITIES.—

8                   “(1) IN GENERAL.—In carrying out this sec-  
9                   tion, the Secretary shall support activities to prepare  
10                  personnel, including activities for the preparation of  
11                  personnel who will serve children with high-incidence  
12                  and low-incidence disabilities, consistent with the ob-  
13                  jectives described in subsection (a).

14                  “(2) AUTHORIZED ACTIVITIES.—Activities that  
15                  may be carried out under this subsection include the  
16                  following:

17                       “(A) Supporting collaborative personnel  
18                       preparation activities undertaken by institutions  
19                       of higher education, local educational agencies,  
20                       and other local entities—

21                               “(i) to improve and reform their exist-  
22                               ing programs, to support effective existing  
23                               programs, to support the development of  
24                               new programs, and to prepare teachers  
25                               and related services personnel—

1 “(I) to meet the diverse needs of  
2 children with disabilities for early  
3 intervention, educational, and transi-  
4 tional services; and

5 “(II) to work collaboratively in  
6 regular classroom settings; and

7 “(ii) to incorporate best practices and  
8 scientifically based research about pre-  
9 paring personnel—

10 “(I) so the personnel will have  
11 the knowledge and skills to improve  
12 educational results for children with  
13 disabilities; and

14 “(II) to implement effective  
15 teaching strategies and interventions  
16 to prevent the misidentification, over-  
17 identification, or underidentification  
18 of children as having a disability, es-  
19 pecially minority and limited English  
20 proficient children.

21 “(B) Developing, evaluating, and dissemi-  
22 nating innovative models for the recruitment,  
23 induction, retention, and assessment of highly  
24 qualified teachers to reduce shortages in per-  
25 sonnel.



1           “(C) Providing continuous personnel prep-  
2           aration, training, and professional development  
3           designed to provide support and ensure reten-  
4           tion of teachers and personnel who teach and  
5           provide related services to children with disabil-  
6           ities.

7           “(D) Developing and improving programs  
8           for paraprofessionals to become special edu-  
9           cation teachers, related services personnel, and  
10          early intervention personnel, including inter-  
11          disciplinary training to enable the paraprofes-  
12          sionals to improve early intervention, edu-  
13          cational, and transitional results for children  
14          with disabilities.

15          “(E) Demonstrating models for the prepa-  
16          ration of, and interdisciplinary training of, early  
17          intervention, special education, and general edu-  
18          cation personnel, to enable the personnel to ac-  
19          quire the collaboration skills necessary to work  
20          within teams and to improve results for chil-  
21          dren with disabilities, particularly within the  
22          general education curriculum.

23          “(F) Promoting effective parental involve-  
24          ment practices to enable the personnel to work

1 with parents and involve parents in the edu-  
2 cation of such parents' children.

3 “(G) Promoting the transferability, across  
4 State and local jurisdictions, of licensure and  
5 certification of teachers and administrators  
6 working with such children.

7 “(H) Developing and disseminating models  
8 that prepare teachers with strategies, including  
9 positive behavioral interventions, for addressing  
10 the conduct of children with disabilities that im-  
11 pedes their learning and that of others in the  
12 classroom.

13 “(I) Developing and improving programs  
14 to enhance the ability of general education  
15 teachers, principals, school administrators, and  
16 school board members to improve results for  
17 children with disabilities.

18 “(J) Supporting institutions of higher edu-  
19 cation with minority enrollments of at least 25  
20 percent for the purpose of preparing personnel  
21 to work with children with disabilities.

22 “(K) Preparing personnel to work in high  
23 need elementary schools and secondary schools,  
24 including urban schools, rural schools, and  
25 schools operated by an entity described in sec-

1           tion 7113(d)(1)(A)(ii) of the Elementary and  
 2           Secondary Education Act of 1965, and schools  
 3           that serve high numbers or percentages of lim-  
 4           ited English proficient children.

5           “(L) Developing, evaluating, and dissemi-  
 6           nating innovative models for the recruitment,  
 7           induction, retention, and assessment of new,  
 8           qualified teachers, especially from groups that  
 9           are underrepresented in the teaching profession,  
 10          including individuals with disabilities.

11          “(c) LOW INCIDENCE DISABILITIES; AUTHORIZED  
 12          ACTIVITIES.—

13           “(1) IN GENERAL.—In carrying out this sec-  
 14          tion, the Secretary shall support activities, consistent  
 15          with the objectives described in subsection (a), that  
 16          benefit children with low incidence disabilities.

17           “(2) AUTHORIZED ACTIVITIES.—Activities that  
 18          may be carried out under this subsection include ac-  
 19          tivities such as the following:

20           “(A) Preparing persons who—

21           “(i) have prior training in educational  
 22           and other related service fields; and

23           “(ii) are studying to obtain degrees,  
 24           certificates, or licensure that will enable  
 25           the persons to assist children with low inci-

1           dence disabilities to achieve the objectives  
 2           set out in their individualized education  
 3           programs described in section 614(d), or to  
 4           assist infants and toddlers with low inci-  
 5           dence disabilities to achieve the outcomes  
 6           described in their individualized family  
 7           service plans described in section 636.

8           “(B) Providing personnel from various dis-  
 9           ciplines with interdisciplinary training that will  
 10          contribute to improvement in early intervention,  
 11          educational, and transitional results for children  
 12          with low incidence disabilities.

13          “(C) Preparing personnel in the innovative  
 14          uses and application of technology, including  
 15          universally designed technologies, assistive tech-  
 16          nology devices, and assistive technology serv-  
 17          ices—

18                 “(i) to enhance learning by children  
 19                 with low incidence disabilities through  
 20                 early intervention, educational, and transi-  
 21                 tional services; and

22                 “(ii) to improve communication with  
 23                 parents.

24          “(D) Preparing personnel who provide  
 25          services to visually impaired or blind children to

1 teach and use Braille in the provision of serv-  
2 ices to such children.

3 “(E) Preparing personnel to be qualified  
4 educational interpreters, to assist children with  
5 low incidence disabilities, particularly deaf and  
6 hard of hearing children in school and school  
7 related activities, and deaf and hard of hearing  
8 infants and toddlers and preschool children in  
9 early intervention and preschool programs.

10 “(F) Preparing personnel who provide  
11 services to children with significant cognitive  
12 disabilities and children with multiple disabil-  
13 ities.

14 “(3) DEFINITION.—As used in this section, the  
15 term ‘low incidence disability’ means—

16 “(A) a visual or hearing impairment, or si-  
17 multaneous visual and hearing impairments;

18 “(B) a significant cognitive impairment; or

19 “(C) any impairment for which a small  
20 number of personnel with highly specialized  
21 skills and knowledge are needed in order for  
22 children with that impairment to receive early  
23 intervention services or a free appropriate pub-  
24 lic education.

1           “(4) SELECTION OF RECIPIENTS.—In selecting  
2 recipients under this subsection, the Secretary may  
3 give preference to eligible entities submitting appli-  
4 cations that include 1 or more of the following:

5           “(A) A proposal to prepare personnel in  
6 more than 1 low incidence disability, such as  
7 deaf and blindness.

8           “(B) A demonstration of an effective col-  
9 laboration with an eligible entity and a local  
10 educational agency that ensures recruitment  
11 and subsequent retention of highly qualified  
12 personnel to serve children with disabilities.

13           “(C) A proposal to address the personnel  
14 and professional development needs in the  
15 State, as identified in section 653(a)(2).

16           “(5) PREPARATION IN USE OF BRAILLE.—The  
17 Secretary shall ensure that all recipients of assist-  
18 ance under this subsection who will use that assist-  
19 ance to prepare personnel to provide services to vis-  
20 ually impaired or blind children that can appro-  
21 priately be provided in Braille will prepare those in-  
22 dividuals to provide those services in Braille.

23           “(d) LEADERSHIP PREPARATION; AUTHORIZED AC-  
24 TIVITIES.—

1           “(1) IN GENERAL.—In carrying out this sec-  
 2           tion, the Secretary shall support leadership prepara-  
 3           tion activities that are consistent with the objectives  
 4           described in subsection (a).

5           “(2) AUTHORIZED ACTIVITIES.—Activities that  
 6           may be carried out under this subsection include ac-  
 7           tivities such as the following:

8                   “(A) Preparing personnel at the graduate,  
 9                   doctoral, and postdoctoral levels of training to  
 10                  administer, enhance, or provide services to im-  
 11                  prove results for children with disabilities.

12                  “(B) Providing interdisciplinary training  
 13                  for various types of leadership personnel, in-  
 14                  cluding teacher preparation faculty, administra-  
 15                  tors, researchers, supervisors, principals, related  
 16                  services personnel, and other persons whose  
 17                  work affects early intervention, educational, and  
 18                  transitional services for children with disabil-  
 19                  ities.

20           “(e) ENHANCED SUPPORT AND TRAINING FOR BE-  
 21           GINNING SPECIAL EDUCATORS; AUTHORIZED ACTIVI-  
 22           TIES.—

23           “(1) IN GENERAL.—In carrying out this sec-  
 24           tion, the Secretary shall support personnel prepara-

tion activities that are consistent with the objectives described in subsection (a).

“(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—

“(A) enhancing and restructuring an existing program or developing a preservice teacher education program, to prepare special education teachers, at colleges or departments of education within the institution of higher education, by incorporating an additional 5th year clinical learning opportunity, field experience, or supervised practicum into a program of preparation and coursework for special education teachers; or

“(B) Creating or supporting professional development schools that provide—

“(i) high quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or

“(ii) inservice professional development to veteran special education teachers through the ongoing exchange of information and instructional strategies.



1           “(3) ELIGIBLE PARTNERSHIPS.—Eligible recipi-  
2           ents of assistance under this subsection are partner-  
3           ships—

4                 “(A) that shall consist of—

5                         “(i) 1 or more institutions of higher  
6                         education with special education personnel  
7                         preparation programs;

8                         “(ii) 1 or more local educational agen-  
9                         cies; and

10                        “(iii) in the case of activities assisted  
11                        under paragraph (2)(B), an elementary  
12                        school or secondary school; and

13                 “(B) that may consist of other entities eli-  
14                 gible for assistance under this part, such as a  
15                 State educational agency.

16           “(4) PRIORITY.—In awarding grants or enter-  
17           ing into contracts or cooperative agreements under  
18           this subsection, the Secretary shall give priority to  
19           partnerships that include local educational agencies  
20           that serve—

21                 “(A) high numbers or percentages of low-  
22                 income students; or

23                 “(B) schools that have failed to make ade-  
24                 quate yearly progress toward enabling children

1           with disabilities to meet academic achievement  
2           standards.

3           “(f) TRAINING TO SUPPORT GENERAL EDUCATORS;  
4 AUTHORIZED ACTIVITIES.—

5           “(1) IN GENERAL.—In carrying out this sec-  
6           tion, the Secretary shall support personnel prepara-  
7           tion activities that are consistent with the objectives  
8           described in subsection (a).

9           “(2) AUTHORIZED ACTIVITIES.—Activities that  
10          may be carried out under this subsection include—

11           “(A) high quality professional development  
12           for general educators that develops the knowl-  
13           edge and skills, and enhances the ability, of  
14           general educators to—

15           “(i) utilize classroom-based techniques  
16           to identify students who may be eligible for  
17           special education services, and deliver in-  
18           struction in a way that meets the individ-  
19           ualized needs of children with disabilities  
20           through appropriate supports, accommoda-  
21           tions, and curriculum modifications;

22           “(ii) utilize classroom-based tech-  
23           niques, such as scientifically based reading  
24           instruction;

1 “(iii) work collaboratively with special  
2 education teachers and related services  
3 personnel;

4 “(iv) implement strategies, such as  
5 positive behavioral interventions—

6 “(I) to address the behavior of  
7 children with disabilities that impedes  
8 the learning of such children and oth-  
9 ers; or

10 “(II) to prevent children from  
11 being misidentified as children with  
12 disabilities;

13 “(v) prepare children with disabilities  
14 to participate in statewide assessments  
15 (with and without accommodations) and  
16 alternative assessment, as appropriate;

17 “(vi) develop effective practices for en-  
18 suring that all children with disabilities are  
19 a part of all accountability systems under  
20 the Elementary and Secondary Education  
21 Act of 1965;

22 “(vii) work with and involve parents  
23 of children with disabilities in their child’s  
24 education;

1                   “(viii) understand how to effectively  
 2                   construct IEPs, participate in IEP meet-  
 3                   ings, and implement IEPs; and

4                   “(ix) in the case of principals and su-  
 5                   perintendents, be instructional leaders and  
 6                   promote improved collaboration between  
 7                   general educators, special education teach-  
 8                   ers, and related services personnel; and

9                   “(B) release and planning time for the ac-  
 10                  tivities described in this subsection.

11                  “(3) ELIGIBLE PARTNERSHIPS.—Eligible recipi-  
 12                  ents of assistance under this subsection are partner-  
 13                  ships—

14                   “(A) that shall consist of—

15                   “(i) 1 or more institutions of higher  
 16                   education with special education personnel  
 17                   preparation programs;

18                   “(ii) 1 or more local educational agen-  
 19                   cies; and

20                   “(B) that may consist of other entities eli-  
 21                   gible for assistance under this part, such as a  
 22                   State educational agency.

23                  “(g) APPLICATIONS.—

24                   “(1) IN GENERAL.—Any eligible entity that de-  
 25                   sires to receive a grant, or enter into a contract or

1 cooperative agreement, under this section shall sub-  
2 mit an application to the Secretary at such time, in  
3 such manner, and containing such information as  
4 the Secretary may require.

5 “(2) IDENTIFIED STATE NEEDS.—

6 “(A) REQUIREMENT TO ADDRESS IDENTI-  
7 FIED NEEDS.—Any application under sub-  
8 section (b), (c), (d), (e), or (f) shall include in-  
9 formation demonstrating to the satisfaction of  
10 the Secretary that the activities described in the  
11 application will address needs identified by the  
12 State or States the applicant proposes to serve,  
13 consistent with the needs identified in the State  
14 plan described in section 653(a)(2).

15 “(B) COOPERATION WITH STATE EDU-  
16 CATIONAL AGENCIES.—Any applicant that is  
17 not a local educational agency or a State edu-  
18 cational agency shall include in the application  
19 information demonstrating to the satisfaction of  
20 the Secretary that the applicant and 1 or more  
21 State educational agencies have engaged in a  
22 cooperative effort to carry out and monitor the  
23 project to be assisted.

24 “(3) ACCEPTANCE BY STATES OF PERSONNEL  
25 PREPARATION REQUIREMENTS.—The Secretary may

1       require applicants to provide assurances from 1 or  
2       more States that such States—

3               “(A) intend to accept successful completion  
4               of the proposed personnel preparation program  
5               as meeting State personnel standards for serv-  
6               ing children with disabilities or serving infants  
7               and toddlers with disabilities; and

8               “(B) need personnel in the area or areas  
9               in which the applicant proposes to provide prep-  
10              aration, as identified in the States’ comprehen-  
11              sive systems of personnel development under  
12              parts B and C.

13       “(h) SELECTION OF RECIPIENTS.—

14              “(1) IMPACT OF PROJECT.—In selecting award  
15              recipients under this section, the Secretary shall con-  
16              sider the impact of the proposed project described in  
17              the application in meeting the need for personnel  
18              identified by the States.

19              “(2) REQUIREMENT FOR APPLICANTS TO MEET  
20              STATE AND PROFESSIONAL STANDARDS.—The Sec-  
21              retary shall make grants and enter into contracts  
22              and cooperative agreements under this section only  
23              to eligible applicants that meet State and profes-  
24              sionally recognized standards for the preparation of  
25              special education and related services personnel, if

1 the purpose of the project is to assist personnel in  
2 obtaining degrees.

3 “(3) PREFERENCES.—In selecting recipients  
4 under this section, the Secretary may give preference  
5 to institutions of higher education that are—

6 “(A) educating regular education personnel  
7 to meet the needs of children with disabilities in  
8 integrated settings;

9 “(B) educating special education personnel  
10 to work in collaboration with regular educators  
11 in integrated settings; and

12 “(C) successfully recruiting and preparing  
13 individuals with disabilities and individuals  
14 from groups that are underrepresented in the  
15 profession for which the institution of higher  
16 education is preparing individuals.

17 “(i) SERVICE OBLIGATION.—Each application for  
18 funds under subsections (b), (c), (d), and (e) shall include  
19 an assurance that the applicant will ensure that individ-  
20 uals who receive a scholarship under the proposed project  
21 will subsequently provide special education and related  
22 services to children with disabilities for a period of 1 year  
23 for every year for which assistance was received, or repay  
24 all or part of the cost of that assistance, in accordance  
25 with regulations issued by the Secretary.

1       “(j) SCHOLARSHIPS.—The Secretary may include  
2 funds for scholarships, with necessary stipends and allow-  
3 ances, in awards under subsections (b), (c), (d), and (e).

4       “(k) DEFINITIONS.—In this section the term ‘per-  
5 sonnel’ means special education teachers, general edu-  
6 cation teachers, principals, administrators, related services  
7 personnel, paraprofessionals, and early intervention per-  
8 sonnel serving infants, toddlers, preschoolers, or children  
9 with disabilities.

10       “(l) AUTHORIZATION OF APPROPRIATIONS.—There  
11 are authorized to be appropriated to carry out this section  
12 such sums as may be necessary for each of the fiscal years  
13 2004 through 2010.

14       **“SEC. 665. STUDIES AND EVALUATIONS.**

15       “(a) STUDIES AND EVALUATIONS.—

16               “(1) DELEGATION.—The Secretary shall dele-  
17 gate to the Director of the Institute for Education  
18 Sciences responsibility to carry out this section.

19               “(2) ASSESSMENT.—The Secretary shall, di-  
20 rectly or through grants, contracts, or cooperative  
21 agreements awarded on a competitive basis, assess  
22 the progress in the implementation of this Act, in-  
23 cluding the effectiveness of State and local efforts to  
24 provide—



1           “(A) a free appropriate public education to  
2 children with disabilities; and

3           “(B) early intervention services to infants  
4 and toddlers with disabilities, and infants and  
5 toddlers who would be at risk of having sub-  
6 stantial developmental delays if early interven-  
7 tion services were not provided to them.

8           “(b) NATIONAL ASSESSMENT.—

9           “(1) IN GENERAL.—The Secretary shall carry  
10 out a national assessment of activities carried out  
11 with Federal funds under this Act in order—

12           “(A) to determine the effectiveness of this  
13 Act in achieving its purposes;

14           “(B) to provide timely information to the  
15 President, Congress, the States, local edu-  
16 cational agencies, and the public on how to im-  
17 plement this Act more effectively; and

18           “(C) to provide the President and Con-  
19 gress with information that will be useful in de-  
20 veloping legislation to achieve the purposes of  
21 this Act more effectively.

22           “(2) CONSULTATION.—The Secretary shall  
23 plan, review, and conduct the national assessment  
24 under this subsection in consultation with research-  
25 ers, State practitioners, local practitioners, parents

1 of children with disabilities, and other appropriate  
2 individuals.

3 “(3) SCOPE OF ASSESSMENT.—The national as-  
4 sessment shall assess the—

5 “(A) implementation of programs assisted  
6 under this Act and the impact of those pro-  
7 grams on addressing the developmental, edu-  
8 cational, and transitional needs of, and improv-  
9 ing the academic achievement and functional  
10 outcomes of, children with disabilities to enable  
11 the children to reach challenging developmental  
12 goals and challenging State academic content  
13 standards based on State academic assess-  
14 ments, including alternative assessments;

15 “(B) types of programs and services that  
16 have demonstrated the greatest likelihood of  
17 helping students reach the challenging State  
18 academic content standards and developmental  
19 goals;

20 “(C) implementation of the personal prepa-  
21 ration professional development activities as-  
22 sisted under this Act and the impact on instruc-  
23 tion, student academic achievement, and teach-  
24 er qualifications to enhance the ability of spe-  
25 cial education teachers and regular education

1 teachers to improve results for children with  
2 disabilities; and

3 “(D) effectiveness of schools, local edu-  
4 cational agencies, States, and other recipients  
5 of assistance under this Act, in achieving the  
6 purposes of this Act in—

7 “(i) improving the academic achieve-  
8 ment of children with disabilities and their  
9 performance on regular statewide assess-  
10 ments, and the performance of children  
11 with disabilities on alternate assessments;

12 “(ii) improving the participation rate  
13 of children with disabilities in the general  
14 education curriculum;

15 “(iii) improving the transitions of chil-  
16 dren with disabilities at natural transition  
17 points;

18 “(iv) placing and serving children with  
19 disabilities, including minority children, in  
20 the least restrictive environment appro-  
21 priate;

22 “(v) preventing children with disabil-  
23 ities, especially children with emotional dis-  
24 turbances and specific learning disabilities,  
25 from dropping out of school;

1                   “(vi) addressing the reading and lit-  
2                   eracy needs of children with disabilities;

3                   “(vii) coordinating services provided  
4                   under this Act with each other, with other  
5                   educational and pupil services (including  
6                   preschool services), and with health and  
7                   social services funded from other sources;

8                   “(viii) improving the participation of  
9                   parents of children with disabilities in the  
10                  education of their children;

11                  “(ix) resolving disagreements between  
12                  education personnel and parents through  
13                  alternate dispute resolution activities in-  
14                  cluding mediation and voluntary binding  
15                  arbitration; and

16                  “(x) reducing the misidentification of  
17                  children, especially minority and limited  
18                  English proficient children.

19                  “(4) INTERIM AND FINAL REPORTS.—The Sec-  
20                  retary shall submit to the President and Congress—

21                  “(A) an interim report that summarizes  
22                  the preliminary findings of the national assess-  
23                  ment not later than 3 years after the date of  
24                  enactment of the Individuals with Disabilities  
25                  Education Improvement Act of 2003; and

1           “(B) a final report of the findings of the  
2           assessment not later than 5 years after the date  
3           of enactment of the Individual with Disabilities  
4           Education Improvement Act of 2003.

5           “(c) STUDY ON ENSURING ACCOUNTABILITY FOR  
6 STUDENTS WITH SIGNIFICANT DISABILITIES.—The Sec-  
7 retary shall carry out a national study or studies to exam-  
8 ine—

9           “(1) the criteria that States use to determine  
10          eligibility for alternate assessments and the number  
11          and type of children who take those assessments;

12          “(2) the validity and reliability of alternate as-  
13          sessment instruments and procedures;

14          “(3) the alignment of alternate assessments  
15          with State academic content and achievement stand-  
16          ards or with alternate academic achievement stand-  
17          ards; and

18          “(4) the use and effectiveness of alternate as-  
19          sessments in appropriately measuring student  
20          progress and outcomes specific to individualized in-  
21          structional need.

22          “(d) ANNUAL REPORT.—The Secretary shall provide  
23 an annual report to Congress that—

24               “(1) summarizes the research conducted under  
25               section 662;

1           “(2) analyzes and summarizes the data re-  
2           ported by the States and the Secretary of the Inte-  
3           rior under section 618;

4           “(3) summarizes the studies and evaluations  
5           conducted under this section and the timeline for  
6           their completion;

7           “(4) describes the extent and progress of the  
8           national assessment; and

9           “(5) describes the findings and determinations  
10          resulting from reviews of State implementation of  
11          this Act.

12          “(e) AUTHORIZED ACTIVITIES.—In carrying out this  
13          subsection, the Secretary may support objective studies,  
14          evaluations, and assessments, including studies that—

15               “(1) analyze measurable impact, outcomes, and  
16               results achieved by State educational agencies and  
17               local educational agencies through their activities to  
18               reform policies, procedures, and practices designed  
19               to improve educational and transitional services and  
20               results for children with disabilities;

21               “(2) analyze State and local needs for profes-  
22               sional development, parent training, and other ap-  
23               propriate activities that can reduce the need for dis-  
24               ciplinary actions involving children with disabilities;

1           “(3) assess educational and transitional services  
2           and results for children with disabilities from minor-  
3           ity backgrounds, including—

4           “(A) data on—

5           “(i) the number of minority children  
6           who are referred for special education eval-  
7           uation;

8           “(ii) the number of minority children  
9           who are receiving special education and re-  
10          lated services and their educational or  
11          other service placement;

12          “(iii) the number of minority children  
13          who graduated from secondary programs  
14          with a regular diploma in the standard  
15          number of years; and

16          “(iv) the number of minority children  
17          who drop out of the educational system;  
18          and

19          “(B) the performance of children with dis-  
20          abilities from minority backgrounds on State  
21          assessments and other performance indicators  
22          established for all students;

23          “(4) measure educational and transitional serv-  
24          ices and results of children with disabilities served  
25          under this Act, including longitudinal studies that—

1           “(A) examine educational and transitional  
2           services and results for children with disabilities  
3           who are 3 through 17 years of age and are re-  
4           ceiving special education and related services  
5           under this Act, using a national, representative  
6           sample of distinct age cohorts and disability  
7           categories; and

8           “(B) examine educational results, transi-  
9           tion services, postsecondary placement, and em-  
10          ployment status of individuals with disabilities,  
11          18 through 21 years of age, who are receiving  
12          or have received special education and related  
13          services under this Act; and

14          “(5) identify and report on the placement of  
15          children with disabilities by disability category.

16          “(f) RESERVATION FOR STUDIES AND TECHNICAL  
17          ASSISTANCE.—

18               “(1) IN GENERAL.—Except as provided in para-  
19          graph (2) and notwithstanding any other provision  
20          of this Act, the Secretary may reserve not more than  
21          ½ of 1 percent of the amount appropriated under  
22          parts B and C for each fiscal year to carry out this  
23          section, of which \$3,000,000 shall be available to  
24          carry out subsection (c).



1           “(2) MAXIMUM AMOUNT.—For the first fiscal  
 2       year for which the amount described in paragraph  
 3       (1) is at least \$40,000,000, the maximum amount  
 4       the Secretary may reserve under paragraph (1), is  
 5       \$40,000,000. For each subsequent fiscal year, the  
 6       maximum amount the Secretary may reserve under  
 7       paragraph (1) is \$40,000,000, increased by the cu-  
 8       mulative rate of inflation since the fiscal year de-  
 9       scribed in the previous sentence.

10           “(3) USE OF MAXIMUM AMOUNT.—In any fiscal  
 11       year described in paragraph (2) for which the Sec-  
 12       retary reserves the maximum amount described in  
 13       that paragraph, the Secretary shall use at least  $\frac{1}{2}$   
 14       of the reserved amount for activities under sub-  
 15       section (d).

16       **“Subpart 3—Supports To Improve Results for**  
 17               **Children With Disabilities**

18       **“SEC. 670. PURPOSES.**

19       “The purposes of this subpart are to ensure that—

20           “(1) children with disabilities and their parents  
 21       receive training and information on their rights, re-  
 22       sponsibilities, and protections under this Act, in  
 23       order to develop the skills necessary to cooperatively  
 24       and effectively participate in planning and decision

1 making relating to early intervention, educational,  
2 and transitional services;

3 “(2) parents, teachers, administrators, early  
4 intervention personnel, related services personnel,  
5 and transition personnel receive coordinated and ac-  
6 cessible technical assistance and information to as-  
7 sist them in improving early intervention, edu-  
8 cational, and transitional services and results for  
9 children with disabilities and their families; and

10 “(3) appropriate technology and media are re-  
11 searched, developed, and demonstrated, to improve  
12 and implement early intervention, educational, and  
13 transitional services and results for children with  
14 disabilities and their families.

15 **“SEC. 671. PARENT TRAINING AND INFORMATION CENTERS.**

16 “(a) PROGRAM AUTHORIZED.—The Secretary may  
17 award grants to, and enter into contracts and cooperative  
18 agreements with, parent organizations to support parent  
19 training and information centers to carry out activities  
20 under this section.

21 “(b) REQUIRED ACTIVITIES.—Each parent training  
22 and information center that receives assistance under this  
23 section shall—

24 “(1) provide training and information that  
25 meets the needs of parents of children with disabil-

1       ities living in the area served by the center, particu-  
2       larly underserved parents and parents of children  
3       who may be inappropriately identified, to enable  
4       their children with disabilities to—

5               “(A) meet developmental and functional  
6               goals, and challenging academic achievement  
7               goals that have been established for all children;  
8               and

9               “(B) be prepared to lead productive inde-  
10              pendent adult lives, to the maximum extent pos-  
11              sible;

12             “(2) serve the parents of infants, toddlers, and  
13             children with the full range of disabilities described  
14             in section 602(3);

15             “(3) assist parents to—

16               “(A) better understand the nature of their  
17               children’s disabilities and their educational, de-  
18               velopmental, and transitional needs;

19               “(B) communicate effectively and work col-  
20               laboratively with personnel responsible for pro-  
21               viding special education, early intervention,  
22               transition services, and related services;

23               “(C) participate in decisionmaking proc-  
24               esses and the development of individualized

1 education programs under part B and individ-  
2 ualized family service plans under part C;

3 “(D) obtain appropriate information about  
4 the range, type, and quality of options, pro-  
5 grams, services, technologies, and research  
6 based practices and interventions, and resources  
7 available to assist children with disabilities and  
8 their families in school and at home;

9 “(E) understand the provisions of this Act  
10 for the education of, and the provision of early  
11 intervention services to, children with disabil-  
12 ities; and

13 “(F) participate in school reform activities;

14 “(4) in States where the State elects to contract  
15 with the parent training and information center,  
16 contract with State educational agencies to provide,  
17 consistent with subparagraphs (B) and (D) of sec-  
18 tion 615(e)(2), individuals who meet with parents to  
19 explain the mediation process to the parents;

20 “(5) assist parents in resolving disputes in the  
21 most expeditious and effective way possible, includ-  
22 ing encouraging the use, and explaining the benefits,  
23 of alternative methods of dispute resolution, such as  
24 the mediation process described in section 615(e);

1           “(6) assist parents and students with disabil-  
2           ities to understand their rights and responsibilities  
3           under this Act, including those under section 615(m)  
4           on the student’s reaching the age of majority;

5           “(7) assist parents to understand the avail-  
6           ability of, and how to effectively use, procedural  
7           safeguards under this Act;

8           “(8) assist parents in understanding, preparing  
9           for, and participating in, the process described in  
10          section 615(f)(1)(B);

11          “(9) network with appropriate clearinghouses,  
12          including organizations conducting national dissemi-  
13          nation activities under section 663, and with other  
14          national, State, and local organizations and agen-  
15          cies, such as protection and advocacy agencies, that  
16          serve parents and families of children with the full  
17          range of disabilities described in section 602(3); and

18          “(10) annually report to the Secretary on—

19               “(A) the number and demographics of par-  
20               ents to whom the center provided information  
21               and training in the most recently concluded fis-  
22               cal year;

23               “(B) the effectiveness of strategies used to  
24               reach and serve parents, including underserved  
25               parents of children with disabilities; and

1                   “(C) the number of parents served who  
2                   have resolved disputes through alternative  
3                   methods of dispute resolution.

4           “(c) OPTIONAL ACTIVITIES.—A parent training and  
5 information center that receives assistance under this sec-  
6 tion may provide information to teachers and other profes-  
7 sionals to assist the teachers and professionals in improv-  
8 ing results for children with disabilities.

9           “(d) APPLICATION REQUIREMENTS.—Each applica-  
10 tion for assistance under this section shall identify with  
11 specificity the special efforts that the parent organization  
12 will undertake—

13                   “(1) to ensure that the needs for training and  
14 information of underserved parents of children with  
15 disabilities in the area to be served are effectively  
16 met; and

17                   “(2) to work with community based organiza-  
18 tions.

19           “(e) DISTRIBUTION OF FUNDS.—

20                   “(1) IN GENERAL.—The Secretary shall—

21                           “(A) make at least 1 award to a parent or-  
22 ganization in each State for a parent training  
23 and information center which is designated as  
24 the statewide parent training and information  
25 center; or

1           “(B) in the case of a large State, make  
2           awards to multiple parent training and informa-  
3           tion centers, but only if the centers demonstrate  
4           that coordinated services and supports will  
5           occur among the multiple centers.

6           “(2) SELECTION REQUIREMENT.—The Sec-  
7           retary shall select among applications submitted by  
8           parent organizations in a State in a manner that en-  
9           sures the most effective assistance to parents, in-  
10          cluding parents in urban and rural areas, in the  
11          State.

12          “(f) QUARTERLY REVIEW.—

13               “(1) MEETINGS.—The board of directors of  
14               each parent organization that receives an award  
15               under this section shall meet at least once in each  
16               calendar quarter to review the activities for which  
17               the award was made.

18               “(2) CONTINUATION AWARD.—When an organi-  
19               zation requests a continuation award under this sec-  
20               tion, the board of directors shall submit to the Sec-  
21               retary a written review of the parent training and  
22               information program conducted by the organization  
23               during the preceding fiscal year.

24          “(g) DEFINITION OF PARENT ORGANIZATION.—As  
25          used in this section, the term ‘parent organization’ means

1 a private nonprofit organization (other than an institution  
2 of higher education) that has a board of directors—

3 “(1) the majority of whom are parents of chil-  
4 dren with disabilities ages birth through 26;

5 “(2) that includes—

6 “(A) individuals working in the fields of  
7 special education, related services, and early  
8 intervention; and

9 “(B) individuals with disabilities;

10 “(3) the parent and professional members of  
11 which are broadly representative of the population to  
12 be served; and

13 “(4) has as its mission serving families of chil-  
14 dren and youth with disabilities who—

15 “(A) are ages birth through 26; and

16 “(B) have the full range of disabilities de-  
17 scribed in section 602(3).

18 **“SEC. 672. COMMUNITY PARENT RESOURCE CENTERS.**

19 “(a) IN GENERAL.—The Secretary may award grants  
20 to, and enter into contracts and cooperative agreements  
21 with, local parent organizations to support parent training  
22 and information centers that will help ensure that under-  
23 served parents of children with disabilities, including low  
24 income parents, parents of children with limited English  
25 proficiency, and parents with disabilities, have the training



1 and information the parents need to enable the parents  
2 to participate effectively in helping their children with dis-  
3 abilities—

4 “(1) to meet developmental and functional  
5 goals, and challenging academic achievement goals  
6 that have been established for all children; and

7 “(2) to be prepared to lead productive inde-  
8 pendent adult lives, to the maximum extent possible.

9 “(b) REQUIRED ACTIVITIES.—Each community par-  
10 ent resource center assisted under this section shall—

11 “(1) provide training and information that  
12 meets the training and information needs of parents  
13 of children with disabilities proposed to be served by  
14 the grant, contract, or cooperative agreement;

15 “(2) carry out the activities required of parent  
16 training and information centers under paragraphs  
17 (2) through (9) of section 671(b);

18 “(3) establish cooperative partnerships with the  
19 parent training and information centers funded  
20 under section 671; and

21 “(4) be designed to meet the specific needs of  
22 families who experience significant isolation from  
23 available sources of information and support.

1       “(c) DEFINITION.—As used in this section, the term  
 2 ‘local parent organization’ means a parent organization,  
 3 as defined in section 671(g), that—

4               “(1) has a board of directors the majority of  
 5       whom are parents of children with disabilities ages  
 6       birth through 26 from the community to be served;  
 7       and

8               “(2) has as its mission serving parents of chil-  
 9       dren with disabilities who—

10               “(A) are ages birth through 26; and

11               “(B) have the full range of disabilities de-  
 12       scribed in section 602(3).

13   **“SEC. 673. TECHNICAL ASSISTANCE FOR PARENT TRAINING**  
 14       **AND INFORMATION CENTERS.**

15       “(a) IN GENERAL.—The Secretary may, directly or  
 16       through awards to eligible entities, provide technical as-  
 17       sistance for developing, assisting, and coordinating parent  
 18       training and information programs carried out by parent  
 19       training and information centers receiving assistance  
 20       under sections 671 and 672.

21       “(b) AUTHORIZED ACTIVITIES.—The Secretary may  
 22       provide technical assistance to a parent training and infor-  
 23       mation center under this section in areas such as—

24               “(1) effective national coordination of parent  
 25       training efforts, which includes encouraging collabo-

1 rative efforts among award recipients under sections  
2 671 and 672;

3 “(2) dissemination of information, scientifically  
4 based research, and research based practices and  
5 interventions;

6 “(3) promotion of the use of technology, includ-  
7 ing universal designed technologies, assistive tech-  
8 nology devices, and assistive technology services;

9 “(4) reaching underserved populations;

10 “(5) including children with disabilities in gen-  
11 eral education programs;

12 “(6) facilitation of transitions from—

13 “(A) early intervention services to pre-  
14 school;

15 “(B) preschool to elementary school;

16 “(C) elementary school to secondary  
17 school; and

18 “(D) secondary school to postsecondary en-  
19 vironments; and

20 “(7) promotion of alternative methods of dis-  
21 pute resolution, including mediation.

22 **“SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION,**  
23 **AND UTILIZATION; AND MEDIA SERVICES.**

24 “(a) IN GENERAL.—The Secretary, on a competitive  
25 basis, shall award grants to, and enter into contracts and

1 cooperative agreements with, eligible entities to support  
2 activities described in subsections (b) and (c).

3 “(b) TECHNOLOGY DEVELOPMENT, DEMONSTRA-  
4 TION, AND USE.—

5 “(1) IN GENERAL.—In carrying out this sec-  
6 tion, the Secretary shall support activities to pro-  
7 mote the development, demonstration, and use of  
8 technology.

9 “(2) AUTHORIZED ACTIVITIES.—The following  
10 activities may be carried out under this subsection:

11 “(A) Conducting research on and pro-  
12 moting the demonstration and use of innova-  
13 tive, emerging, and universally designed tech-  
14 nologies for children with disabilities, by im-  
15 proving the transfer of technology from re-  
16 search and development to practice.

17 “(B) Supporting research, development,  
18 and dissemination of technology with universal  
19 design features, so that the technology is acces-  
20 sible to the broadest range of individuals with  
21 disabilities without further modification or ad-  
22 aptation.

23 “(C) Demonstrating the use of systems to  
24 provide parents and teachers with information  
25 and training concerning early diagnosis of,

1 intervention for, and effective teaching strate-  
2 gies for, young children with reading disabil-  
3 ities.

4 “(D) Supporting the use of Internet-based  
5 communications for students with cognitive dis-  
6 abilities in order to maximize their academic  
7 and functional skills.

8 “(c) EDUCATIONAL MEDIA SERVICES; OPTIONAL AC-  
9 TIVITIES.—In carrying out this section, the Secretary may  
10 support—

11 “(1) educational media activities that are de-  
12 signed to be of educational value in the classroom  
13 setting to children with disabilities;

14 “(2) providing (A) video description, (B) open  
15 captioning, (C) closed captioning of television pro-  
16 grams, videos, or other materials appropriate for use  
17 in the classroom setting, or (D) news (but news only  
18 until September 30, 2006), when such services are  
19 not provided by the producer or distributor of such  
20 information, materials, or news, including programs  
21 and materials associated with new and emerging  
22 technologies, such as CDs, DVDs, video streaming,  
23 and other forms of multimedia;

1           “(3) distributing materials described in para-  
2       graphs (1) and (2) through such mechanisms as a  
3       loan service; and

4           “(4) providing free educational materials, in-  
5       cluding textbooks, in accessible media for visually  
6       impaired and print disabled students in elementary  
7       schools and secondary schools.

8           “(d) APPLICATIONS.—Any eligible entity that wishes  
9       to receive a grant, or enter into a contract or cooperative  
10      agreement, under this section shall submit an application  
11      to the Secretary at such time, in such manner, and con-  
12      taining such information as the Secretary may require.

13          “(e) AUTHORIZATION OF APPROPRIATIONS.—There  
14      are authorized to be appropriated to carry out this section  
15      such sums as may be necessary for each of the fiscal years  
16      2004 through 2009.

17      **“SEC. 675. AUTHORIZATION OF APPROPRIATIONS.**

18          ““There are authorized to be appropriated to carry out  
19      sections 671, 672, 673, and 663 such sums as may be  
20      necessary for each of the fiscal years 2004 through 2009.

1 **“Subpart 4—Interim Alternative Educational Set-**  
2 **tings, Behavioral Supports, and Whole School**  
3 **Interventions**

4 **“SEC. 681. PURPOSE.**

5 “The purpose of this subpart is to authorize re-  
6 sources to foster a safe learning environment that sup-  
7 ports academic achievement for all students by improving  
8 the quality of interim alternative educational settings, pro-  
9 viding more behavioral supports in schools, and supporting  
10 whole school interventions.

11 **“SEC. 682. DEFINITION OF ELIGIBLE ENTITY.**

12 “In this subpart, the term ‘eligible entity’ means—

13 “(1) a local educational agency; or

14 “(2) a consortium consisting of a local edu-  
15 cational agency and 1 or more of the following enti-  
16 ties:

17 “(A) another local educational agency;

18 “(B) a community-based organization with  
19 a demonstrated record of effectiveness in help-  
20 ing special needs students with behavioral chal-  
21 lenges succeed;

22 “(C) an institution of higher education;

23 “(D) a mental health provider; or

24 “(E) an educational service agency.

1 **“SEC. 683. PROGRAM AUTHORIZED.**

2 “The Secretary is authorized to award grants, on a  
3 competitive basis, to eligible entities to enable the eligible  
4 entities—

5 “(1) to establish or expand behavioral supports  
6 and whole school behavioral interventions by pro-  
7 viding for effective, research-based practices, includ-  
8 ing—

9 “(A) comprehensive, early screening efforts  
10 for students at risk for emotional and behav-  
11 ioral difficulties;

12 “(B) training for school staff on early  
13 identification, prereferral, and referral proce-  
14 dures;

15 “(C) training for administrators, teachers,  
16 related services personnel, behavioral specialists,  
17 and other school staff in whole school positive  
18 behavioral interventions and supports, behav-  
19 ioral intervention planning, and classroom and  
20 student management techniques;

21 “(D) joint training for administrators, par-  
22 ents, teachers, related services personnel, behav-  
23 ioral specialists, and other school staff on effec-  
24 tive strategies for positive behavioral interven-  
25 tions and behavior management strategies that  
26 focus on the prevention of behavior problems;



1           “(E) developing or implementing specific  
2           curricula, programs, or interventions aimed at  
3           addressing behavioral problems;

4           “(F) stronger linkages between school-  
5           based services and community-based resources,  
6           such as community mental health and primary  
7           care providers; or

8           “(G) using behavioral specialists, related  
9           services personnel, and other staff necessary to  
10          implement behavioral supports; or

11          “(2) to improve interim alternative educational  
12          settings by—

13               “(A) improving the training of administra-  
14               tors, teachers, related services personnel, behav-  
15               ioral specialists, and other school staff (includ-  
16               ing ongoing mentoring of new teachers);

17               “(B) attracting and retaining a high qual-  
18               ity, diverse staff;

19               “(C) providing for on-site counseling serv-  
20               ices;

21               “(D) utilizing research-based interventions,  
22               curriculum, and practices;

23               “(E) allowing students to use instructional  
24               technology that provides individualized instruc-  
25               tion;

1           “(F) ensuring that the services are fully  
2 consistent with the goals of the individual stu-  
3 dent’s IEP;

4           “(G) promoting effective case management  
5 and collaboration among parents, teachers, phy-  
6 sicians, related services personnel, behavioral  
7 specialists, principals, administrators, and other  
8 school staff;

9           “(H) promoting interagency coordination  
10 and coordinated service delivery among schools,  
11 juvenile courts, child welfare agencies, commu-  
12 nity mental health providers, primary care pro-  
13 viders, public recreation agencies, and commu-  
14 nity-based organizations; or

15           “(I) providing for behavioral specialists to  
16 help students transitioning from interim alter-  
17 native educational settings reintegrate into their  
18 regular classrooms.

19 **“SEC. 684. PROGRAM EVALUATIONS.**

20           “(a) REPORT AND EVALUATION.—Each eligible enti-  
21 ty receiving a grant under this subpart shall prepare and  
22 submit annually to the Secretary a report on the outcomes  
23 of the activities assisted under the grant.

24           “(b) BEST PRACTICES ON WEB SITE.—The Sec-  
25 retary shall make available on the Department’s web site

1 information for parents, teachers, and school administra-  
2 tors on best practices for interim alternative educational  
3 settings, behavior supports, and whole school intervention.

4 **“SEC. 685. AUTHORIZATION OF APPROPRIATIONS.**

5 “There are authorized to be appropriated to carry out  
6 this subpart \$50,000,000 for fiscal year 2004 and such  
7 sums as may be necessary for each of the 5 succeeding  
8 fiscal years.”.

9 **TITLE II—REHABILITATION ACT**  
10 **OF 1973**

11 **SEC. 201. FINDINGS.**

12 Section 2(a) of the Rehabilitation Act of 1973 (29  
13 U.S.C. 701(a)) is amended—

14 (1) in paragraph (5), by striking “and” at the  
15 end;

16 (2) in paragraph (6), by striking the period and  
17 inserting “; and”; and

18 (3) by adding at the end the following:

19 “(7) there is a substantial need to improve and  
20 expand services for students with disabilities under  
21 this Act.”.

22 **SEC. 202. DEFINITIONS.**

23 Section 7 of the Rehabilitation Act of 1973 (29  
24 U.S.C. 705) is amended—

1           (1) by redesignating paragraphs (35) through  
2           (39) as paragraphs (36) through (40), respectively;  
3           (2) in subparagraph (A)(ii) of paragraph (36)  
4           (as redesignated in paragraph (1)), by striking  
5           “paragraph (36)(C)” and inserting “paragraph  
6           (37)(C)”; and

7           (3) by inserting after paragraph (34) the fol-  
8           lowing:

9           “(35)(A) The term ‘student with a disability’  
10          means an individual with a disability who—

11               “(i) is not younger than 14 and not older  
12               than 21;

13               “(ii) has been determined to be eligible  
14               under section 102(a) for assistance under this  
15               title; and

16               “(iii)(I) is eligible for, and is receiving,  
17               special education under part B of the Individ-  
18               uals with Disabilities Education Act (29 U.S.C.  
19               1411 et seq.); or

20               “(II) is an individual with a disability, for  
21               purposes of section 504.

22           “(B) The term ‘students with disabilities’  
23          means more than 1 student with a disability.”.

1 **SEC. 203. ADDITIONAL AUTHORIZATION OF APPROPRIA-**  
 2 **TIONS.**

3 Section 100 of the Rehabilitation Act of 1973 (29  
 4 U.S.C. 720) is amended—

5 (1) by redesignating subsection (d) as sub-  
 6 section (e); and

7 (2) by inserting after subsection (c) the fol-  
 8 lowing:

9 “(d) **ADDITIONAL AUTHORIZATION OF APPROPRIA-**  
 10 **TIONS FOR SERVICES TO STUDENTS WITH DISABIL-**  
 11 **ITIES.**—In addition to any funds appropriated under sub-  
 12 section (b)(1), there are authorized to be appropriated  
 13 such sums as may be necessary for fiscal years 2004  
 14 through 2009 to carry out programs and activities under  
 15 sections 101(a)(25)(B) and 103(b)(6).”.

16 **SEC. 204. STATE PLAN.**

17 (a) **ASSESSMENT AND STRATEGIES.**—Section  
 18 101(a)(15) of the Rehabilitation Act of 1973 (29 U.S.C.  
 19 721(a)(15)) is amended—

20 (1) in subparagraph (A)(i)—

21 (A) in subclause (II), by striking “and” at  
 22 the end;

23 (B) in subclause (III), by adding “and” at  
 24 the end; and

25 (C) by adding at the end the following:

1 “(IV) students with disabilities,  
 2 including their need for transition  
 3 services;”; and

4 (2) in subparagraph (D)—

5 (A) by redesignating clauses (iii), (iv), and  
 6 (v) as clauses (iv), (v), and (vi), respectively;  
 7 and

8 (B) by inserting after clause (ii) the fol-  
 9 lowing:

10 “(iii) the methods to be used to im-  
 11 prove and expand vocational rehabilitation  
 12 services for students with disabilities, in-  
 13 cluding the coordination of services de-  
 14 signed to facilitate the transition of such  
 15 students from the receipt of educational  
 16 services in school to the receipt of voca-  
 17 tional rehabilitation services under this  
 18 title.”.

19 (b) SERVICES FOR STUDENTS WITH DISABILITIES.—

20 Section 101(a) of the Rehabilitation Act of 1973 (29  
 21 U.S.C. 721(a)) is amended by adding at the end the fol-  
 22 lowing:

23 “(25) SERVICES FOR STUDENTS WITH DIS-  
 24 ABILITIES.—The State plan shall provide an assur-  
 25 ance satisfactory to the Secretary that the State—

1           “(A) has developed and implemented strat-  
2           egies to address the needs identified in the as-  
3           sessment described in paragraph (15), and  
4           achieve the goals and priorities identified by the  
5           State, to improve and expand vocational reha-  
6           bilitation services for students with disabilities  
7           on a statewide basis in accordance with para-  
8           graph (15); and

9           “(B) will use funds appropriated under  
10          section 100(d) to carry out programs or activi-  
11          ties designed to improve and expand vocational  
12          rehabilitation services for students with disabil-  
13          ities that—

14               “(i) facilitate the transition of the stu-  
15               dents with disabilities from the receipt of  
16               educational services in school, to the re-  
17               ceipt of vocational rehabilitation services  
18               under this title, including, at a minimum,  
19               those services specified in the interagency  
20               agreement required in paragraph (11)(D);

21               “(ii) improve the achievement of post-  
22               school goals of students with disabilities,  
23               including improving the achievement  
24               through attendance at meetings regarding  
25               individualized education programs devel-

1           oped under section 614 of the Individuals  
2           with Disabilities Education Act (20 U.S.C.  
3           1414);

4           “(iii) provide vocational guidance, ca-  
5           reer exploration services, and job search  
6           skills and strategies and technical assist-  
7           ance to students with disabilities;

8           “(iv) support the provision of training  
9           and technical assistance to State and local  
10          educational agency and designated State  
11          agency personnel responsible for the plan-  
12          ning and provision of services to students  
13          with disabilities; and

14          “(v) support outreach activities to stu-  
15          dents with disabilities who are eligible for,  
16          and need, services under this title.”.

17 **SEC. 205. SCOPE OF SERVICES.**

18          Section 103 of the Rehabilitation Act of 1973 (29  
19          U.S.C. 723) is amended—

20               (1) in subsection (a)(15), by inserting “, includ-  
21               ing services described in clauses (i) through (iii) of  
22               section 101(a)(25)(B)” before the semicolon; and

23               (2) in subsection (b), by striking paragraph (6)  
24               and inserting the following:



1 “(6)(A)(i) Consultation and technical assistance  
 2 services to assist State and local educational agen-  
 3 cies in planning for the transition of students with  
 4 disabilities from school to post-school activities, in-  
 5 cluding employment.

6 “(ii) Training and technical assistance de-  
 7 scribed in section 101(a)(25)(B)(iv).

8 “(B) Services for groups of individuals with dis-  
 9 abilities who meet the requirements of clauses (i)  
 10 and (iii) of section 7(35)(A), including services de-  
 11 scribed in clauses (i), (ii), (iii), and (v) of section  
 12 101(a)(25)(B), to assist in the transition from  
 13 school to post-school activities.”.

14 **SEC. 206. STANDARDS AND INDICATORS.**

15 Section 106(a) of the Rehabilitation Act of 1973 (29  
 16 U.S.C. 726(a)) is amended by striking paragraph (1)(C)  
 17 and all that follows through paragraph (2) and inserting  
 18 the following:

19 “(2) MEASURES.—The standards and indica-  
 20 tors shall include outcome and related measures of  
 21 program performance that—

22 “(A) facilitate the accomplishment of the  
 23 purpose and policy of this title;

24 “(B) to the maximum extent practicable,  
 25 are consistent with the core indicators of per-

1           formance, and corresponding State adjusted lev-  
2           els of performance, established under section  
3           136(b) of the Workforce Investment Act of  
4           1998 (29 U.S.C. 2871(b)); and

5           “(C) include measures of the program’s  
6           performance with respect to the transition to  
7           post-school activities, and achievement of the  
8           post-school goals, of students with disabilities  
9           served under the program.”.

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